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A SUPPLEMENT

TO

THE ANGLO-INDIAN CODES

1887, 1888

XIV/2

BY

WHITLEY STOKES, D.C.L.

OF THE INNER TEMPLE, BARRISTER-AT-LAW
CORRESPONDENT OF THE INSTITUTE OF FRANCE, AND LATE LAW-MEMBER
OF THE COUNCIL OF THE GOVERNOR-GENERAL OF INDIA

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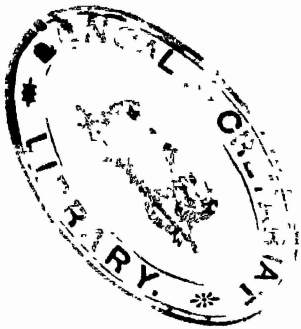

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PREFATORY NOTE.

My edition of the Anglo-Indian Codes (vol. i. 1887, vol. ii. 1888) brings Indian legislation and Indian judicial decisions, so far as they affect the Codes, down to the end of May, 1888. The following Supplement does the like for the year ending May 31, 1889. References to about sixty recent English decisions, which may usefully be consulted by those engaged in studying or administering the Codes, will be found in their proper places.

The importance of the Indian Merchandise Marks Act, 1889, and of the Succession Certificate Act, 1889, has induced me to print these enactments at length. In future editions of my work the former will be inserted as an appendix to the Penal Code, the latter as an appendix to the Succession Act. As to the Probate and Administration Act, 1881 (*The Anglo-Indian Codes*, i. 317–321), there is now some hope that this useful law will be extended to the whole of British India. For at a recent meeting of the Governor General's Council, a member of the Government of India stated that the Home Department would address the Local Governments pointing out the necessity of authorising, under Act V of 1881, all District Courts to grant administration.

I have, in conclusion, to express my gratitude for information received from the India Office and from the Legislative Department of the Government of India.

W. S.

July 15, 1889.

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SUPPLEMENT.

VOLUME I.

INTRODUCTION.

P. xvi, note 1, *add* See L. R. 14 I. A. 96: 'equity and good conscience, generally interpreted to mean the rules of English law if found applicable to Indian society and circumstances.'

— note 2, line 4, *after* 907 *insert* against the right to sue for oral abuse merely causing mental distress.

P. xviii, note, *add* Moreover, these decisions are sometimes so silent as to general principles and so conflicting with each other that they cannot be taken to represent any defined rule of the common law of India, 10 All. 439, per Mahmúd J., referring to the question whether an action will lie for slander uttered by a witness when actually under examination.

P. xx, l. 9, *add a footnote* As to this matter see infra, vol. i. pp. 70, 71, and vol. ii. p. 949. It has lately been said that the widest possible construction should be put upon codes of procedure as distinguished from substantive law, 15 Cal. 435, per Norris J.

THE PENAL CODE.

P. 7, *insert in alphabetical order :*

Merchandise Marks (IV of 1889).
Metal Tokens (I of 1889).
Reserve Forces (IV of 1888).

And dele Contagious Diseases (XIV of 1868).

P. 8, Madras Presidency, col. 2, *after* l. 9 *insert* Places of Public Resort (Mad. Act. II of 1888). In l. 11, *for* VIII of 1867 *read* III of 1888.

P. 8, Bombay Presidency, col. 1, *insert* Aden Port Trust (Bom.

Act V of 1888, secs. 67–75), and under 'Municipal Acts,' *for* III of 1872, IV of 1878, *read* VI of 1873, III of 1888.

P. 8, Lower Provinces, col. 1, *insert* Calcutta Municipal Act (Ben. Act II of 1888).

P. 9, Lower Burma, *insert* Acting as advocate without authority. Touting (Act XI of 1889 secs. 78, 81).

P. 11, note 3, *add* In 12 Bom. 362, West J. defined malice as 'a conscious violation of the law to the prejudice of the plaintiff.'

P. 17, note 3, *add* and see 16 Cal. 206.

P. 21, l. 29, *add* and for the offences mentioned in sec. 9 of the Merchandise Marks Act, 1889.

P. 25, note 1, *add* But the Indian Judges are well aware that the three great deterrents from crime are the *adequacy*, the certainty, and the nature of the punishment.

P. 26, l. 9, *add* and see Act IV of 1889, sec. 9.

P. 28, note 2, *add* A Bill to prevent the disclosure of documents and information by means either of spies or of breaches of official trust is now before the House of Commons.

P. 39, note 1, *add* But see the recent case in 12 Mad. 72.

P. 55. As to Possession in the Common Law, see now Pollock and Wright's essay on the subject, Oxford, 1888.

P. 98, sec. 28. For the Explanation, Act I of 1889 (the Metal Tokens Act) substitutes the following:—

Explanation 1.—It is not essential to counterfeiting that the imitation should be exact.

Explanation 2.—When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception, or knew it to be likely that deception would thereby be practised[1].

P. 115, note 6, *add* Sec. 78 would protect the governor of a gaol who keeps a prisoner in confinement under a warrant good on the face of it, see *Henderson* v. *Preston*, 21 Q B. Div. 362.

P. 116, sec. 79. See another illustration, 12 Bom. 377.

P. 122, note 1, l. 10, *add* or the destruction of an unstamped

[1] i.e. a person who makes one thing to resemble another shall be assumed to intend the natural consequences of his act, namely that some person should be deceived by mistaking the one for the other. Good authorities have held that this was always the law; but Expl. 2 puts the matter beyond doubt.

document purporting to be a valuable security and required by law to be stamped, 12 Mad. 149.

— note 2, *add* No right of private defence is conferred save as against the perpetrators of offences under the Penal Code. There is no such right as against a mere trespasser, 16 Cal. 206, at p. 218.

P. 123, sec. 99, clauses 1 and 2, *see* 13 Bom. 168.

P. 143, sec. 141, note 9, l. 1, *after* vi. *insert* 16 Cal. 206, at p. 219.

P. 157, sec. 176. If an executor or administrator, on being required by the Court to exhibit an inventory or account under the Indian Succession Act, 1865, sec. 277, intentionally omits to comply with the requisition, he shall be deemed guilty of an offence under the Penal Code, sec. 176. See Act VI of 1889, sec. 7, cl. (4).

P. 159, sec. 182. See 14 Cal. 314.

P 161, sec. 186, note 4. Nor is resistance to a surveyor illegally ordered by a Collector to execute a mámlatdar's decree for possession, 13 Bom. 168.

P. 166, sec. 193. The exhibition of an intentionally false inventory or account under the Indian Succession Act, 1865, sec. 277, shall be deemed to be an offence under the Penal Code, sec. 193. See Act VI of 1889, sec. 7, cl. (4).

P. 173, sec. 210, 'after it has been satisfied;' i.e. in fact. It matters not that the satisfaction was of such a nature that it could not be recognised by the Court executing the decree, 16 Cal. 126, where the adjustment of the decree had not been certified as required by the Civil Procedure Code, sec. 258.

— note 8, *add* See 5 All. 598; 14 Cal. 633.

P. 181, sec. 225. Custody need only be authorised by law, 11 Mad. 441.

P. 184, sec. 230. *Add a note*: No piece of metal which is not coin as here defined shall be received as money by or on behalf of any railway-administration or local authority: and if any person on behalf of a railway administration or on behalf of a local authority or on behalf of the lessee of the collection of any toll or other impost leviable by a railway-administration or local authority receives as money any piece of metal which is not such coin as aforesaid, he shall be punished with fine which may extend to ten rupees, Act I of 1889, sec. 8.

P. 194, sec. 268, note 5, para. 2, l. 8, *insert* or the cutting up meat for a dinner in sight of some Jains whose temple was close by, 12 Bom. 437.

P. 198, note 4. Sec. 283 should be read with sec. 431. Any one sustaining special injury by reason of an obstruction to a highway

may sue for damages and any other appropriate relief; and further, under sec. 133 et seq. of the Cr. P. Code, summary proceedings may be taken by a magistrate to prevent or remove any such obstruction injurious to the public, 15 Cal. 460, at p. 467.

P. 211, sec. 304 A, note 3, l. 10. When death is caused by an act in its nature criminal this section does not apply, 12 Mad. 56.

P. 219, sec. 330, l. 8, 'demand,' i.e. apparently, in respect of property, 11 Mad. 257, not e.g. a demand to return to *A*'s house.

P. 232, sec. 372, note 5, *add* and 11 Mad. 393, at p. 401, where Muttusámi Ayyár J. said that the object of the prohibition was to protect the chastity of girls under sixteen years of age.

P. 245, sec. 403, note 3. The dishonest intention may be inferred from the circumstances of the case, 12 Mad. 49; and see *Queen* v. *Proud*, 31 L. J. (M. C.) 71.

P. 250, sec. 411. To constitute the offence of receiving stolen property there must be proof that some person other than the prisoner had possession of the goods before the prisoner got possession of them, 15 Cal. 511, following *R.* v. *Cordy*, 2 Russell on Crimes, 5th ed. p. 484.

P. 254, note 4, *add* See 12 Mad. 151.

P. 268, sec. 463. As to forging answers to University examination papers, see 12 Mad. 151.

P. 273, sec. 471. See 11 Mad. 411 (fabricating receipt as voucher to cover a contemporaneous embezzlement).

P. 275, sec. 477, note 9, *add* So are a promissory note, 12 Mad. 54, and an unstamped account signed by *A* showing indebtedness to *B*, 12 Mad. 148.

Pp. 275–278. For secs. 478–489 new sections have been substituted by section 3 of the following Act, which deals with three classes of offences: (1) the imitation of trade marks; (2) the application to goods of false trade descriptions, that is, of words or figures indicating that goods are something which in fact they are not; and (3) trading in falsely-marked goods:—

ACT IV OF 1889.

(Received the assent of the Governor General on the 1st March, 1889.)

An Act to amend the Law relating to Fraudulent Marks on Merchandise.

Whereas it is expedient to amend the law relating to fraudulent marks on merchandise; It is hereby enacted as follows:—

Title, extent, and commencement.

1. (1) This Act may be called the Indian Merchandise Marks Act, 1889.

(2) It extends to the whole of British India; and, subject to the provision of the last section of this Act,

(3) It shall come into force on the first day of April, 1889.

2. In this Act, unless there is something repugnant in the subject or context,— Definitions.

(1) 'trade mark' has the meaning assigned to that expression in section 478 of the Indian Penal Code as amended by this Act:

(2) 'trade description' means any description, statement, or other indication, direct or indirect,—

(*a*) as to the number, quantity, measure, gauge or weight of any goods, or

(*b*) as to the place or country in which, or the time at which, any goods were made or produced, or

(*c*) as to the mode of manufacturing or producing any goods, or

(*d*) as to the material of which any goods are composed, or

(*e*) as to any goods being the subject of an existing patent, privilege or copyright; and the use of any numeral, word or mark which according to the custom of the trade is commonly taken to be an indication of any of the above matters shall be deemed to be a trade description within the meaning of this Act[1]:

(3) 'false trade description' means a trade description which is untrue in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement or otherwise, where that alteration makes the description untrue in a material respect, and the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of this Act:

(4) 'goods' means anything which is the subject of trade or manufacture: and

(5) 'name' includes any abbreviation of a name[2].

Amendment of the Indian Penal Code.

3. For that part of Chapter XVIII of the Indian Penal Code which relates to Trade and Property Marks, the following shall be substituted, namely:— Substitution of new sections for ss. 478 to 489 of Penal Code.

Of Trade, Property and other Marks.

478. A mark used for denoting that goods[3] are the manu- Trade mark.

[1] From 50 & 51 Vic. c. 28, sec. 3, substituting 'numeral' for 'figure.' See *Ex p. Stephens*, 3 Ch. D. 659.

[2] Clauses (3), (4), and (5) are taken from the same section, substituting 'untrue' for 'false.'

[3] i. e. anything which is the subject of trade or manufacture, sec. 2, cl. (4).

facture or merchandise[1] of a particular person is called a trade mark, and for the purposes of this Code the expression 'trade mark' includes any trade mark which is registered in the register of trade marks kept under the Patents, Designs and Trade Marks Act, 1883[2] and any trade mark which, either with or without registration, is protected by law in any British possession or foreign State to which the provisions of the one hundred and third section of the Patents, Designs and Trade Marks Act, 1883[3], are, under Order in Council, for the time being applicable.

Property mark.

479. A mark used for denoting that moveable property belongs to a particular person is called a property mark.

Using a false trade mark.

480. Whoever marks any goods or any case, package or other receptacle containing goods, or uses any case, package or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed that the goods so marked, or any goods contained in any such receptacle so marked, are the manufacture or merchandise of a person whose manufacture or merchandise they are not, is said to use a false trade mark.

Using a false property mark.

481. Whoever marks any moveable property or goods or any case, package or other receptacle containing moveable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark.

Punishment for using a false trade mark or property mark.

482. Whoever uses any false trade mark or any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Counterfeiting a trade mark or property mark used by another.

483. Whoever counterfeits any trade mark or property mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Counterfeiting a

484. Whoever counterfeits any property mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person

[1] This covers the case where a trade mark is applied to articles not actually manufactured by the owner of the trade mark.

[2] 46 & 47 Vict. c. 57.

[3] This provision now (June, 1889) extends to the following: Belgium, Brazil, France, Guatemala, Italy, Mexico, the Netherlands and the East Indian colonies of the Netherlands, Norway, Paraguay, Portugal, Servia, Spain, Sweden, Switzerland, Tunis, United States of America, Uruguay.

or at a particular time or place or that the property is of a particular quality or has passed through a particular office or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

mark used by a public servant.

485. Whoever makes or has in his possession any die, plate or other instrument for the purpose of counterfeiting a trade mark or property mark, or has in his possession a trade mark or property mark for the purpose of denoting that any goods are the manufacture or merchandise of a person whose manufacture or merchandise they are not, or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Making or possession of any instrument for counterfeiting a trade mark or property mark.

486. Whoever sells, or exposes or has in possession for sale or any purpose of trade or manufacture, any goods or things with a counterfeit trade mark or property mark affixed to or impressed upon the same or to or upon any case, package or other receptacle in which such goods are contained, shall, unless he proves—

Selling goods marked with a counterfeit trade mark or property mark.

(*a*) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark, and

(*b*) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(*c*) that otherwise he had acted innocently,

be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

487. Whoever makes any false mark upon any case, package or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain or that it does not contain goods which it does contain or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Making a false mark upon any receptacle containing goods.

488. Whoever makes use of any such false mark in any manner prohibited by the last foregoing section shall, unless he

Punishment for making

use of any such false mark.

proves that he acted without intent to defraud, be punished as if he had committed an offence against that section.

Tampering with property mark with intent to cause injury.

489. Whoever removes, destroys, defaces or adds to any property mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Trade Descriptions[1]

Provisions supplemental to the definition of false trade description.

4. (1) The provisions of this Act respecting the application of a false trade description to goods or respecting goods to which a false trade description[2] is applied, shall extend to the application to goods of any such numerals, words or marks, or arrangement or combination thereof, whether including a trade mark or not, as are or is reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are, and to goods having such numerals, words or marks, or arrangement or combination, applied thereto.

(2) The provisions of this Act respecting the application of a false trade description[2] to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name[3] or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purpose of this enactment the expression false name or initials means as applied to any goods any name or initials—

(*a*) not being a trade mark, or part of a trade mark, and

(*b*) being identical with, or a colourable imitation of the name, or initials of a person carrying on business in connection with goods of the same description and not having authorised the use of such name or initials.

(3) A trade description which denotes or implies that there are contained in any goods to which it is applied more yards, feet or inches than there are contained therein standard yards, standard feet or standard inches is a false trade description.

Application of trade descriptions.

5. (1) A person shall be deemed to apply a trade description to goods who—

[1] Here the main provisions of the English Merchandise Marks Act, 1887, have been followed. But the punishment for applying false trade descriptions or dealing in falsely-marked goods has been diminished to those provided in the Penal Code for using false trade marks.

[2] See sec. 2, cl. (3).

[3] This includes any abbreviation of a name.

(*a*) applies it to the goods themselves, or

(*b*) applies it to any covering label[1], reel or other thing in or with which the goods are sold or are exposed or had in possession for sale or any purpose of trade or manufacture, or

(*c*) places, encloses or annexes any goods which are sold, or are exposed or had in possession for sale or any purpose of trade or manufacture, in, with or to any covering, label, reel or other thing to which a trade description has been applied, or

(*d*) uses a trade description in any manner reasonably calculated to lead to the belief that the goods in connexion with which it is used are designated or described by that trade description.

(2) A trade description shall be deemed to be applied whether it is woven, impressed or otherwise worked into or annexed or affixed to the goods or any covering, label, reel or other thing.

(3) The expression 'covering' includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame or wrapper, and the expression 'label' includes any band or ticket[2].

Penalty for applying a false trade description.

6. If a person applies a false trade description to goods, he shall, subject to the provisions of this Act, and unless he proves that he acted without intent to defraud[3], be punished with imprisonment for a term which may extend to three months or with fine which may extend to two hundred rupees, and in the case of a second or subsequent conviction with imprisonment which may extend to one year, or with fine, or with both.

Penalty for selling goods to which a false trade description is applied.

7. If a person sells, or exposes or has in possession for sale or any purpose of trade or manufacture, any goods or things to which a false trade description is applied, he shall, unless he proves—

(*a*) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade description, and

(*b*) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(*c*) that otherwise he had acted innocently,

be punished with imprisonment for a term which may extend to

[1] A comma seems wanting after 'covering.'

[2] Properly, 'label' indicates a piece of paper or other thin substance which is made to adhere to the goods to which it is applied.

[3] The originator of the fraud must prove that he acted without intent to defraud. But under sec. 7 a mere dealer in falsely-marked goods need only show that he took reasonable precautions, had no ground to suspect fraud, and gave the prosecution all information in his power. Honest traders should have no difficulty in doing this.

three months or with fine which may extend to two hundred rupees, and in case of a second or subsequent conviction with imprisonment which may extend to one year, or with fine, or with both.

Unintentional Contravention of the Law relating to Marks and Descriptions.

Unintentional contravention of the law relating to marks and descriptions.

8. Where a person is accused under section 482 of the Indian Penal Code of using a false trade mark or property mark by reason of his having applied a mark to any goods, property or receptacle in the manner mentioned in section 480 or section 481 of that Code, as the case may be, or under section 6 of this Act of applying to goods any false trade description, or under section 485 of the Indian Penal Code of making any die, plate or other instrument for the purpose of counterfeiting a trade mark or property mark, and proves—

(*a*) that in the ordinary course of his business he is employed, on behalf of other persons, to apply trade marks or property marks, or trade descriptions, or, as the case may be, to make dies, plates or other instruments for making, or being used in making, trade marks or property marks, and that in the case which is the subject of the charge he was so employed and was not interested in the goods or other thing by way of profit or commission dependent on the sale thereof, and

(*b*) that he took reasonable precautions against committing the offence charged, and

(*c*) that he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the mark or description, and

(*d*) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons on whose behalf the mark or description was applied,

he shall be acquitted [1].

Forfeiture of Goods

Forfeiture of goods.

9. (1) When a person is convicted under section 482 of the Indian Penal Code [2] of using a false trade mark, or under section 486 of that Code [3] of selling, or exposing or having in possession for sale or any purpose of trade or manufacture, any goods or things

[1] From 50 & 51 Vic. c. 28, sec. 7, omitting the provision that the accused 'shall be liable to pay the costs incurred by the prosecutor, unless he has given due notice to him that he will rely on the above defence.' See as to costs, sec. 14 infra.

[2] Supra, p. 6.

[3] Supra, p. 7.

with a counterfeit trade mark applied thereto, or under section 487 or section 488 of that Code of making, or making use of, a false mark, or under section 6 or section 7 of this Act of applying a false trade description to goods or of selling, or exposing or having in possession for sale or any purpose of trade or manufacture, any goods or things to which a false trade description is applied, or is acquitted on proof of the matter or matters specified in section 486 of the Indian Penal Code or section 7 or section 8 of this Act, the Court convicting or acquitting him may direct the forfeiture to Her Majesty of all goods and things by means of, or in relation to, which the offence has been committed or, but for such proof as aforesaid, would have been committed.

(2) When a forfeiture is directed on a conviction and an appeal lies against the conviction, an appeal shall lie against the forfeiture also.

(3) When a forfeiture is directed on an acquittal and the goods or things to which the direction relates are of value exceeding fifty rupees, an appeal against the forfeiture may be preferred, within thirty days from the date of the direction, to the Court to which in appealable cases appeals lie from sentences of the Court which directed the forfeiture.

Amendment of the Sea Customs Act, 1878[1].

Amendment of section 18.

10. (1) For clause (*d*) of section 18 of the Sea Customs Act, 1878, the following shall be substituted, namely:—

(*d*) goods having applied thereto a counterfeit trade mark within the meaning of the Indian Penal Code, or a false trade description within the meaning of the Indian Merchandise Marks Act, 1889:

(*e*) goods made or produced beyond the limits of the United Kingdom and British India and having applied thereto any name or trade mark being, or purporting to be, or being a colourable imitation of, the name or trade mark of any person who is a manufacturer, dealer or trader in the United Kingdom or in British India, unless—

(i) the name or trade mark is, as to every application thereof, accompanied by a definite indication of the goods having been made or produced in a place beyond the limits of the United Kingdom and British India, and

(ii) that place and the country in which it is situated are in that indication indicated in letters as large and conspicuous as any letter in the name or trade mark, and in the same language and character as the name or trade mark.

[1] Act VIII of 1878.

(2) To section 18 of the Sea Customs Act, 1878, as amended by sub-section (1), the following shall be added, namely:—

(*f*) piece-goods, such as are ordinarily sold by length or by the piece, which—

(i) have not conspicuously stamped in English numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, according to the real length of the piece, and

(ii) have been manufactured beyond the limits of India, or,

(iii) having been manufactured within those limits, have been manufactured beyond the limits of British India in premises which, if they were in British India, would be a factory as defined in the Indian Factories Act, 1881[1].

Addition of a section after section 19.

11. The following shall be added after section 19 of the Sea Customs Act, 1878[2], namely:—

'19A. (1) Before detaining any such goods as are or may be specified in or under section 18 or section 19, as the case may be, or taking any further proceedings with a view to the confiscation thereof under this Act, the Chief Customs-officer or other officer appointed by the Local Government in this behalf may require the regulations under this section, whether as to information, security, conditions or other matters, to be complied with, and may satisfy himself in accordance with those regulations that the goods are such as are prohibited to be imported.

(2) The Governor-General in Council may make regulations either general or special, respecting the detention and confiscation of goods the importation of which is prohibited, and the conditions, if any, to be fulfilled before such detention and confiscation, and may by such regulations determine the information, notices and security to be given, and the evidence requisite for any of the purposes of this section and the mode of verification of such evidence.

(3) Where there is on any goods a name which is identical with, or a colourable imitation of, the name of a place in the United Kingdom or British India, that name, unless accompanied in equally large and conspicuous letters, and in the same language and character, by the name of the country in which such place is situate, shall be treated for the purposes of sections 18 and 19 as if it were the name of a place in the United Kingdom or British India.

(4) Such regulations may apply to all goods the importation of which is prohibited by section 18 or under section 19, or different

[1] Act XV of 1887. [2] Act VIII of 1878.

regulations may be made respecting different classes of such goods or of offences in relation to such goods.

(5) The regulations may provide for the informant reimbursing any public officer and the Secretary of State for India in Council all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.

(6) All regulations under this section shall be published in the Gazette of India and in the Calcutta, Fort St. George, Bombay and Burma Gazettes[1].'

Stamping of length of Piece-goods manufactured in British India.

Stamping of length of piece-goods manufactured in British India.

12. (1) Piece-goods, such as are ordinarily sold by length or by the piece, which have been manufactured in premises which are a factory as defined in the Indian Factories Act, 1881, shall not be removed from those premises without having conspicuously stamped in English numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, according to the real length of the piece.

(2) If any person removes or attempts to remove any such piece-goods from any such premises without the length of each piece being stamped in the manner mentioned in sub-section (1), every such piece, and everything used for the packing or removal thereof, shall be forfeited to Her Majesty, and such person shall be punished with fine which may extend to one thousand rupees[2].

Supplemental Provisions.

Evidence of origin of goods imported by sea.

13. In the case of goods brought into British India by sea, evidence of the port of shipment shall, in a prosecution for an offence against this Act or section 18 of the Sea Customs Act, 1878, as amended by this Act, be *primâ facie* evidence of the place or country in which the goods were made or produced.

Costs of defence or prosecution.

14. (1) On any such prosecution as is mentioned in the last foregoing section, or on any prosecution for an offence against any of the sections of the Indian Penal Code, as amended by this Act, which relate to trade, property and other marks, the Court may order costs to be paid to the defendant by the prosecutor, or to the

[1] This section corresponds closely with 50 & 51 Vic. sec. 16.

[2] This is a step in advance of English legislation, advocated by the Chambers of Commerce of Bengal and Madras, and approved by the Chambers of Commerce in other parts of India, and by the Bombay Mill-owners Association. But why should not the breadth as well as the length be stamped on piece-goods?

prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively[1].

(2) Such costs shall, on application to the Court, be recoverable as if they were a fine.

Limitation of prosecution.

15. No such prosecution as is mentioned in the last foregoing section shall be commenced after the expiration of three years next after the commission of the offence, or one year after the first discovery thereof by the prosecutor, whichever expiration first happens[2].

Authority of the Governor General in Council to issue instructions as to administration of this Act.

16. (1) The Governor General in Council may, by notification in the Gazette of India and in local official Gazettes, issue instructions for observance by Criminal Courts in giving effect to any of the provisions of this Act.

(2) Instructions under sub-section (1) may provide, among other matters, for the limits of variation, as regards number, quantity, measure, gauge or weight, which are to be recognised by Criminal Courts as permissible in the case of any goods.

Implied warranty on sale of marked goods.

17. On the sale or in the contract for the sale of any goods to which a trade mark or mark or trade description has been applied, the seller shall be deemed to warrant that the mark is a genuine mark and not counterfeit or falsely used, or that the trade description is not a false trade description within the meaning of this Act, unless the contrary is expressed in some writing signed by or on behalf of the seller and delivered at the time of the sale or contract to and accepted by the buyer[3].

Savings.

18. (1) Nothing in this Act shall exempt any person from any suit or other proceeding which might, but for anything in this Act, be brought against him.

(2) Nothing in this Act shall entitle any person to refuse to make a complete discovery or to answer any question or interrogatory in any suit or other proceeding, but such discovery or answer shall not be admissible in evidence against such person in any such prosecution as is mentioned in section 14.

(3) Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in British India who in good faith acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master and as to the instructions which he has received from his master.

[1] From 50 & 51 Vic. c. 28, sec. 14. [2] From 50 & 51 Vic. c. 28, sec. 15.
[3] From 50 & 51 Vic. c. 28, sec. 17.

Transitory Provision.

19. The prohibition of the bringing into British India of such piece-goods as are described in clause (*f*) of section 18 of the Sea Customs Act, 1878, as amended by this Act, shall not take effect till the first day of August, 1889, and the provisions of section 12 shall, as regards piece-goods made up in bales in a factory before the first day of April, 1889, remain in abeyance till the first day of July, 1889. Date of commencement of this Act as regards unstamped piece-goods.

P. 283, sec. 498, line 6, 'such woman,' i. e. 'such woman whom the accused knows or has reason to believe,' etc., not 'such woman so enticed as aforesaid, 10 All. 580, per Straight J.

P. 289, sec. 500. The statements of a witness are privileged. If false, the remedy is by indictment for perjury, not by suit for defamation, 11 Mad. 477, following 11 Ben. 321 and 15 Cal. 264.

P. 290, sec. 503, note 1. See 15 Cal. 671. The threat must be communicated, or uttered with the intention of being communicated, to the person threatened, for the purpose of influencing his mind.

P. 293, note 4, *add* Attempt to cheat, 12 Mad. 114.

THE SUCCESSION ACT.

P. 296, l. 27, *after* coverture *insert* So a gift to a husband and wife and a third party would operate as a gift to the three as joint tenants with equal undivided shares. In England see *Jupp* v. *Buckwell*, 57 L. J. Ch. 774.

Pp. 305, l. 33; 315, l. 34; 322, l. 12, Act XXVII of 1865 is now repealed and replaced by the following Act:—

ACT VII OF 1889.

(Received the assent of the Governor General on the 8th March, 1889.)

AN ACT TO FACILITATE THE COLLECTION OF DEBTS ON SUCCESSIONS AND AFFORD PROTECTION TO PARTIES PAYING DEBTS TO THE REPRESENTATIVES OF DECEASED PERSONS.

Whereas it is expedient to facilitate the collection of debts on successions and afford protection to parties paying debts to the representatives of deceased persons; It is hereby enacted as follows:—

1. (1) This Act may be called the Succession Certificate Act, 1889. Title, commencement,

extent and application.

(2) It shall come into force on the first day of May, 1889; and

(3) It extends to the whole of British India (inclusive of Upper Burma except the Shan States);

(4) But a certificate shall not be granted thereunder with respect to any debt or security to which a right can be established by probate or letters of administration under the Indian Succession Act, 1865[1], or by probate of a will to which the Hindú Wills Act, 1870[2], applies, or by letters of administration with a copy of such a will annexed.

Repeal.

2. (1) The enactments specified in the first schedule are repealed to the extent mentioned in the third column thereof.

(2) But nothing in this Act shall affect any certificate granted before the commencement of this Act under Act XXVII of 1860 or any enactment repealed by that Act.

(3) Any enactment except this Act and section 152 of the Probate and Administration Act, 1881, or any document referring to any enactment repealed by this Act shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

(1) 'District Court,' subject to the other provisions of this Act and to the provisions of proviso (*b*) to section 23 of the Panjáb Courts Act, 1884[3], and of any other like enactment for the time being in force, means a Court presided over by a District Judge: and

(2) 'security' means—

(*a*) any promissory note, debenture, stock or other security of the Government of India;

(*b*) any bond, debenture or annuity charged by the Imperial Parliament on the revenues of India;

(*c*) any stock or debenture of, or share in, a company or other incorporated institution;

(*d*) any debenture or other security for money issued by, or on behalf of, a local authority;

(*e*) any other security which the Governor General in Council may, by notification in the Gazette of India, declare to be a security for the purposes of this Act.

[1] Supra, vol. i. pp. 433, 435.

[2] Supra, vol. i. p. 313.

[3] 'The Local Government may direct that the Divisional Court shall for any other purpose be deemed to be the District Court or principal Civil Court of original jurisdiction for any district comprised in the division.'

Proof of representative title a condition precedent to recovery through the Courts of debts from debtors of deceased persons.

4. (1) No Court shall—

(a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming to be entitled to the effects of the deceased person or to any part thereof, or

(b) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt,

except on the production, by the person so claiming, of—

(i) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, or

(ii) a certificate granted under section 36 or section 37 of the Administrator General's Act, 1874,[1] and having the debt mentioned therein, or

(iii) a certificate granted under this Act and having the debt specified therein, or

(iv) a certificate granted under Act XXVII of 1860 or an enactment repealed by that Act, or

(v) a certificate granted under the Regulation of the Bombay Code No. VIII of 1827 and, if granted after the commencement of this Act, having the debt specified therein.

(2) The word 'debt' in sub-section (1) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes.

Court having jurisdiction to grant certificate.

5. The District Court within the jurisdiction of which the deceased ordinarily resided at the time of his death, or if at that time he had no fixed place of residence then within the jurisdiction of which any part of the property of the deceased may be found, may grant a certificate under this Act.

Application for certificate.

6. (1) Application for such a certificate must be made to the District Court by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure[2] for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely :—

(a) the time of the death of the deceased;

(b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Court to which the application is made, then the property of the deceased within those limits;

(c) the family or other near relatives of the deceased and their respective residences;

[1] Supra, vol. i. p. 305. [2] Supra, vol. ii. p. 495.

(*d*) the right in which the petitioner claims[1];

(*e*) the absence of any impediment under section 1, sub-section (4), or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted; and

(*f*) the debts and securities in respect of which the certificate is applied for[2].

(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence[3].

Procedure on application.

7. (1) If the District Court is satisfied that there is ground for entertaining the application, it shall fix a day for the hearing thereof and cause notice of the application and of the day fixed for the hearing—

(*a*) to be served on any person to whom, in the opinion of the Court, special notice of the application should be given, and

(*b*) to be posted on some conspicuous part of the court-house and published in such other manner, if any, as the Court, subject to any rules made by the High Court[4] in this behalf, thinks fit,

and upon the day fixed, or as soon thereafter as may be practicable, shall proceed to decide in a summary manner the right to the certificate.

(2) When the Court decides the right thereto to belong to the applicant, it shall make an order for the grant of the certificate to him.

(3) If the Court cannot decide the right to the certificate without determining questions of law or fact which seem to it to be too intricate and difficult for determination in a summary proceeding, it may nevertheless grant a certificate to the applicant if he appears to be the person having *primâ facie* the best title thereto[5].

(4) When there are more applicants than one for a certificate

[1] whether as heir or as creditor of the deceased.

[2] Under sec. 14 the application must be accompanied by the deposit of the proper amount of fee.

[3] See the Penal Code, sec. 193; supra, vol. i. p. 166.

[4] Supra, vol. i. p. 488.

[5] such as the natural heir. This enables the Court to prevent applications for certificates being perverted into a means of obtaining decisions on intricate and difficult questions of law or fact, decisions which (see sec. 25) are not conclusive as to the rights of the parties concerned. Any risk of loss to the parties legally entitled to the assets is obviated by the provision in sec. 3, subsec. (1).

and it appears to the Court that more than one of such applicants are interested in the estate of the deceased, the Court may, in deciding to whom the certificate is to be granted, have regard to the extent of interest, and the fitness in other respects, of the applicants.

Contents of certificate.

8. When the District Court grants a certificate, it shall therein specify the debts and securities set forth in the application for the certificate[1] and may thereby empower the person to whom the certificate is granted—

(*a*) to receive interest or dividends on, or

(*b*) to negotiate or transfer, or

(*c*) both to receive interest or dividends on, and to negotiate or transfer,

the securities or any of them.

Requisition of security from grantee of certificate.

9. (1) The District Court shall in any case in which it proposes to proceed under section 7, sub-section (3) or sub-section (4), and may in any other case, require, as a condition precedent to the granting of a certificate, that the person to whom it proposes to make the grant shall give to the Judge of the Court, to enure for the benefit of the Judge for the time being, a bond with one or more surety or sureties, or other sufficient security, for rendering an account of debts and securities received by him and for indemnity of persons who may be entitled to the whole or any part of those debts and securities.

(2) The Court may, on application made by petition and on cause shown to its satisfaction, and upon such terms as to security, or providing that the money received be paid into court, or otherwise as the Court thinks fit, assign the bond or other security to some proper person, and that person shall thereupon be entitled to sue thereon in his own name as if it had been originally given to him instead of to the Judge of the Court, and to recover, as trustee for all persons interested, such amount as may be recoverable thereunder.

Extension of certificate.

10. (1) A District Court may from time to time, on the application of the holder of a certificate under this Act, extend the certificate to any debt or security not originally specified therein[2], and every

[1] This, coupled with sec. 14, will operate as a check on false claims; for a man will scarcely pay duty on the amount of a debt which he does not consider himself legally entitled to recover.

[2] But in such case the applicant must pay three, instead of two, per cent. on the amount or value of the unspecified debt or security. (See art. 12 of the Court-Fees Act, sched. I, as amended by this Act, sec. 13). This will prevent speculation on the possibility of being able to collect debts without entering them in the original application and paying the proper fee.

such extension shall have the same effect as if the debt or security to which the certificate is extended had been originally specified therein.

(2) Upon the extension of a certificate, powers with respect to the receiving of interest or dividends on, or the negotiation or transfer of, any security to which the certificate has been extended may be conferred, and a bond or further bond or other security for the purposes mentioned in the last foregoing section may be required, in the same manner as upon the original grant of a certificate.

Forms of certificate and extended certificate.

11. Certificates shall be granted and extensions of certificates shall be made, as nearly as circumstances admit, in the forms set forth in the second schedule.

Amendment of certificate in respect of powers as to securities.

12. Where a District Court has not conferred on the holder of a certificate any power with respect to a security specified in the certificate, or has only empowered him to receive interest or dividends on, or to negotiate or transfer, the security, the Court may, on application made by petition and on cause shown to its satisfaction, amend the certificate by conferring any of the powers mentioned in section 8, or by substituting any one for any other of those powers.

13. [*Sec.* 13 *amends the Court Fees Act*, 1870, *and will be found infra*].

Mode of collecting court-fees on certificates.

14. (1) Every application for a certificate or for the extension of a certificate must be accompanied by a deposit of a sum equal to the fee payable under the first schedule to the Court-fees Act, 1870[1], in respect of the certificate or extension applied for.

(2) If the application is allowed, the sum deposited by the applicant shall be expended, under the direction of the Court, in the purchase of the stamp to be used for denoting the fee payable as aforesaid.

(3) Any sum received under sub-section (1) and not expended under sub-section (2) shall be refunded to the person who deposited it.

Local extent of certificate.

15. A certificate under this Act shall have effect throughout the whole of British India.

Effect of certificate.

16. Subject to the provisions of this Act, the certificate of the District Court shall, with respect to the debts and securities specified therein, be conclusive as against the persons owing such debts or liable on such securities, and shall, notwithstanding any contravention of section 1, sub-section (4), or other defect, afford full indemnity to all such persons as regards all payments made,

[1] Supra, vol. ii. pp. 1009–1042.

or dealings had, in good faith in respect of such debts or securities to or with the person to whom the certificate was granted[1].

Effect of certificate granted or extended by British representative in Foreign State.

17. Where a certificate in the form, as nearly as circumstances admit of[2] the second schedule has been granted to a resident within a Foreign State by the British representative accredited to the State, or where a certificate so granted has been extended in such form by such representative, the certificate shall, when stamped in accordance with the provisions of the Court-fees Act, 1870[3], with respect to certificates under this Act, have the same effect in British India as a certificate granted or extended under this Act.

Revocation of certificate.

18. A certificate granted under this Act may be revoked for any of the following causes, namely :—

(*a*) that the proceedings to obtain the certificate were defective in substance;

(*b*) that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment from the Court of something material to the case;

(*c*) that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently;

(*d*) that the certificate has become useless and inoperative through circumstances;

(*e*) that a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked.

Appeal.

19. (1) Subject to the other provisions of this Act, an appeal shall lie to the High Court from an order of a District Court granting, refusing or revoking a certificate under this Act, and the High Court may, if it thinks fit, by its order on the appeal, declare the person to whom the certificate should be granted and direct the District Court, on application being made therefor, to grant it accordingly, in supersession of the certificate, if any, already granted.

(2) An appeal under sub-section (1) must be preferred within the time allowed for an appeal under the Code of Civil Procedure[4].

[1] No indemnity is afforded except in respect of debts or securities specified in the certificate, which, therefore, the debtor should always see.

[2] i.e. set forth in.

[3] See supra, vol. ii. p. 1033, and infra, p. 57.

[4] See supra, vol. ii. p. 998.

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(3) Subject to the provisions of sub-section (1) and of Chapters XLVI and XLVII of the Code of Civil Procedure as applied by section 647 of that Code, an order of a District Court under this Act shall be final.

Effect on certificate of previous certificate, probate or letters of administration.

20. Save as provided by this Act, a certificate granted thereunder in respect of any of the effects of a deceased person shall be invalid if there has been a previous grant of such a certificate or of probate or letters of administration in respect of the estate of the deceased person and if such previous grant is in force.

Effect on certificate of subsequent probate or letters of administration.

21. (1) A grant of probate or letters of administration under the Probate and Administration Act, 1881, in respect of an estate shall be deemed to supersede any certificate previously granted under this Act in respect of any debts or securities included in the estate.

(2) When at the time of the grant of the probate or letters any suit or other proceeding instituted by the holder of the certificate regarding any such debt or security is pending, the person to whom the grant is made shall, on applying to the Court in which the suit or proceeding is pending, be entitled to take the place of the holder of the certificate in the suit or proceeding.

Validation of certain payments made in good faith to holder of invalid certificate.

22. Where a certificate under this Act has been superseded or is invalid by reason of the certificate having been revoked under section 18, or by reason of the grant of a certificate to a person named in an appellate order under section 19, or by reason of a certificate having been previously granted, or by reason of a grant of probate or letters of administration, or for any other cause, all payments made, or dealings had, as regards debts and securities specified in the superseded or invalid certificate, to or with the holder of that certificate in ignorance of its supersession or invalidity, shall be held good against claims under any other certificate or under the probate or letters of administration.

Prohibition of exercise of certain powers by curators.

23. (1) Where a certificate has been granted under this Act or Act XXVII of 1860, or a grant of probate or letters of administration has been made, a curator appointed under Act XIX of 1841[1] shall not exercise any authority lawfully belonging to the holder of the certificate or to the executor or administrator:

(2) But persons who have paid debts or rents to a curator authorised by a Court to receive them shall be indemnified, and the curator shall be responsible for the payment thereof to the person who has obtained the certificate, probate or letters of administration, as the case may be.

[1] An Act for the protection of moveable and immoveable property against wrongful possession in cases of successions.

24. Any probate or letters of administration granted before the first day of April, 1881, by any Supreme or High Court of Judicature, or by the Court of a Recorder in Burma, in any case in which the deceased person was not a British subject within the meaning of that expression as used in the charters of the Supreme Courts of Judicature, and in which any assets belonging to him were at the time of his death within the local limits of the jurisdiction of the Court shall, for the purpose of the recovery of debts, the protection of persons paying debts, and the negotiation or transfer of securities included in the estate of the deceased, be deemed to have and to have had the effect which a grant of probate or letters of administration has under the Indian Succession Act, 1865:

Effect of certain probates and letters.

Provided that nothing in this section shall be construed to validate any disposal of property by an executor or administrator which has before the commencement of this Act been declared by any competent Court to be invalid.

25. No decision under this Act upon any question of right between any parties shall be held to bar the trial of the same question in any suit or in any other proceeding between the same parties, and nothing in this Act shall be construed to affect the liability of any person who may receive the whole or any part of any debt or security, or any interest or dividend on any security, to account therefor to the person lawfully entitled thereto.

Effect of decisions under this Act, and liability of holder of certificate thereunder.

26. (1) The Local Government may, by notification in the official Gazette, invest any Court inferior in grade to a District Court with the functions of a District Court under this Act[1], and may cancel or vary any such notification.

Investiture of inferior Courts with jurisdiction of District Court for purposes of this Act.

(2) Any inferior Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Court in the exercise of all the powers conferred by this Act upon the District Court, and the provisions of this Act relating to the District Court shall apply to such an inferior Court as if it were a District Court:

Provided that an appeal from any such order of an inferior Court as is mentioned in sub-section (1) of section 19 shall lie to the District Court, and not to the High Court; and that the District Court may, if it thinks fit, by its order on the appeal, make any such declaration and direction as that sub-section authorises the High Court to make by its order on an appeal from an order of a District Court.

[1] If there is any great increase in the number of applications for certificates, the Courts exercising jurisdiction with respect to them should be more accessible and less expensive than District Courts.

(3) An order of a District Court on an appeal from an order of an inferior Court under the last foregoing sub-section shall, subject to the provisions of Chapters XLVI and XLVII of the Code of Civil Procedure as applied by section 647 of that Code, be final.

(4) The District Court may withdraw any proceedings under this Act from an inferior Court and may either itself dispose of them or transfer them to another such Court established within the local limits of the jurisdiction of the District Court and having authority to dispose of the proceedings.

(5) A notification under sub-section (1) may specify any inferior Court specially or any class of such Courts in any local area.

(6) Any Civil Court which for any of the purposes of any enactment is subordinate to, or subject to the control of, a District Court shall for the purposes of this section be deemed to be a Court inferior in grade to a District Court.

Surrender of superseded and invalid certificates.

27. (1) When a certificate under this Act has been superseded or is invalid from any of the causes mentioned in section 22, the holder thereof shall, on the requisition of the Court which granted it, deliver it up to that Court.

(2) If he wilfully and without reasonable cause omits so to deliver it up, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment[1] for a term which may extend to three months, or with both.

Provisions with respect to certificates under Bombay Regulations VIII. of 1827.

28. Notwithstanding anything in the Regulation of the Bombay Code No. VIII of 1827, the provisions of section 3, section 6, sub-section (1), clause (*f*), and sections 8, 9, 10, 11, 12, 14, 16, 18, 19, 25, 26 and 27 of this Act with respect to certificates under this Act and applications therefor, and of section 98 of the Probate and Administration Act, 1881, with respect to the exhibition of inventories and accounts by executors and administrators, shall, so far as they can be made applicable, apply, respectively, to certificates granted under that Regulation, and applications made for certificates thereunder, after the commencement of this Act, and to the exhibition of inventories and accounts by the holders of such certificates so granted.

[1] Of either description as defined in the Indian Penal Code, v. supra, vol. i, p. 489.

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THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

(*See section* 2.)

Number and year.	Subject or title.	Extent of repeal.
	Acts of the Governor-General in Council.	
XXVII of 1860.	Collection of debts on successions.	So much as has not been repealed.
XIV of 1869.	Bombay Civil Courts Act, 1869.	In section 16, from and inclusive of the words and figures 'Bombay Regulation VIII of 1827' down to and inclusive of the words 'representatives of deceased persons) and'.
XV of 1874.	Laws Local Extent Act, 1874.	So much as relates to Act XXVII of 1860.
XIII of 1879.	Oudh Civil Courts Act, 1879.	Section 25, clause (3), relating to applications for certificates under Act XXVII of 1860.
V of 1881.	Probate and Administration Act, 1881.	Sections 151 and 153.
XVIII of 1884.	Panjáb Courts Act, 1884.	Section 29, subsection (1), clause (*a*).
XII of 1887.	Bengal, North-Western Provinces and Assam Civil Courts Act, 1887.	Section 23, subsection (2), clause (*c*).
	Act of the Lieutenant-Governor of Bengal in Council.	
VII of 1880.	Public Demands' Recovery Act, 1880.	In section 7, clause (3), the words 'and the note to paragraph 12 of Schedule I'.

THE SECOND SCHEDULE.

FORMS OF CERTIFICATE AND EXTENDED CERTIFICATE.

(*See section* 11.)

In the Court of

To *A. B.*

Whereas you applied on the day of for a certificate under the Succession Certificate Act 1889, in respect of the following debts and securities, namely:—

Debts.

Serial number.	Name of debtor.	Amount of debt, including interest, on date of application for certificate.	Description and date of instrument, if any, by which the debt is secured.

Securities.

Serial number.	Description.			Market-value of security on date of application for certificate.
	Distinguishing number or letter of security.	Name, title, or class of security.	Amount or par value of security.	

This certificate is accordingly granted to you and empowers you to collect those debts [*and*] [*to receive*] [*interest*] [*dividends*] [*on*] [*to negotiate*] [*to transfer*] [*those securities*].

Dated this day of

District Judge.

In the Court of

On the application of *A. B.* made to me on the day of , I hereby extend this certificate to the following debts and securities, namely :—

Debts.

Serial number.	Name of debtor.	Amount of debt, including interest, on date of application for extension.	Description and date of instrument, if any, by which the debt is secured.

Securities.

Serial number.	Description.			Market-value of security on date of application for extension.
	Distinguishing number or letter of security.	Name, title or class of security.	Amount or par value of security.	

This extension empowers *A. B.* to collect those debts [*and*] [*to receive*] [*interest*] [*dividends*] [*on*] [*to negotiate*] [*to transfer*] [*those securities*].

Dated this day of

District Judge.

P. 310, note 3, *add* See 12 Mad. 126, where Muttusámi Ayyár J. held that the testamentary power had existed in Malabar at least from 1826.

— note 4, *add* See 4 Mad. 150: 12 Mad. 126, at p. 128.

P. 312, note 2. If illegal restrictions (such as creating a perpetuity), made by a Hindú testator on valid dispositions, are separable, they do not invalidate the dispositions, 15 Cal. 409.

P. 318, note 1, l. 13. See as to Bombay, 12 Bom. 621.

P. 319. As to sec. 16 of the Probate and Administration Act, see 12 Bom. 164. As to secs. 37 and 45, see 12 Cal. 376. Secs. 50, 76, 77 and 99 are amended by Act VI of 1889. And for secs. 90 and 98 new sections are substituted by that Act.

P. 355, note 1, *add* And see the *Law Quarterly Review*, iv. 483.

— note 4, line 4, *after* 88 *insert Towart* v. *Sellars*, 5 Dow. 236.

P. 358, sec. 50, l. 14, 'in the presence of,' 16 Cal. 19 (pardanashín).

P. 362, note 2, *add* Sec. 54, so far as it avoids gifts to attesting witnesses, must be construed fairly, *Re Barber*, 31 Ch. D. 665. Where an attorney attests a will authorising him to charge profit-costs, see ibid., and *Re Pooley*, 40 Ch. D. 1.

P. 363, note 4, *add* And see *Jones* v. *Harding*, 58 L. T. R. 60, where also the Court recognised the doctrine that a will or codicil in the testator's possession and not forthcoming at his death is presumed to have been destroyed *animo revocandi*.

P. 445, sec. 234. The following clause has been added by Act VI of 1889, sec. 2:—

'5th, that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Part XXXIV of this Act or has exhibited under that Part an inventory or account which is untrue in a material respect.'

P. 450, sec. 244. For the words 'and that the petitioner is the executor therein named,' Act VI of 1889, sec. 3 substitutes the following:—

'the amount of assets which are likely to come to the petitioner's hands, and

'that the petitioner is the executor named in the will.'

P. 454, sec. 254. For the last forty-two words of this section, Act VI of 1889, sec. 4 substitutes the following:—

'he having undertaken to administer the same, and to make a full and true inventory of the said property and credits and

exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint.'

P. 455, sec. 255. For the last forty-five words of this section, Act VI of 1889, sec. 5 substitutes the following:—

'he having undertaken to administer the same, and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint.'

— sec. 256. For the words 'Every person to whom any grant of administration shall be committed,' Act VI of 1889, sec. 6 substitutes the words 'Every person to whom any grant of letters of administration is committed.'

P. 463, sec. 277. For section 277, Act VI of 1889, sec. 7, substitutes the following:—

Inventory and account.

'277. (1) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may from time to time appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the grant or within such further time as the said Court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands and the manner in which they have been applied or disposed of.

'(2) The High Court may from time to time prescribe the form in which an inventory or account under this section is to be exhibited.

'(3) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under section 176 of the Indian Penal Code.

'(4) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of that Code.'

P. 463, sec. 277 A. In this section, for the words 'it is sought to obtain a grant' the words 'a grant has been made,' and for the words and figures 'the person applying for administration after the first day of April, 1875,' the word 'administrator' has been substituted by Act VI of 1889, sec. 8.

P. 465, sec. 283. In this section, for the words 'the country in which he was domiciled,' Act VI of 1889, sec. 9 substitutes the words 'British India' and repeals the illustration. Note 3 should therefore now be cancelled. The section as altered agrees with *In re Klæbe*, L. R. 28 Ch. Div. 175, dissenting from *Wilson* v. *Lady Dunsany*, 18 Beav. 293, the source of the section as it formerly stood.

P. 466, sec. 284, note 1. See 11 Mad. 360, at p. 365.

P. 484. The following section was added by Act VI of 1889, sec. 10:—

Surrender of revoked probate or letters of administration.

'333. (1) When a grant of probate or letters of administration is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.

'(2) If such person wilfully and without reasonable cause omits so to deliver up the probate or letters, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment of either description for a term which may extend to three months, or with both.'

THE GENERAL CLAUSES ACT.

P. 489, sec. 3, clause (1), line 2. Act I of 1887, sec. 9 inserts the words 'wholly or partially' before 'repealed,' and declares that they shall be deemed to have been there from the commencement of Act I of 1868.

P. 490, note 2. In 16 Cal. 267, a Full Bench has lately held that 'proceedings' did *not* include proceedings in execution after decree.

THE CONTRACT ACT.

P. 494, note 6, *add* For the latest 'implied contract' invented by English Courts, see *Crampton* v. *Ridley & Co.*, 20 Q. B. D. 48, where A. L. Smith J. thought that when *A* and *B* appointed *C* and *D* arbitrators, there was an implied promise by the former jointly to pay the latter reasonable remuneration for their services.

P. 497, note 3, *add* In India, payment by a debtor of part of a debt actually due is now a good consideration for a contract not to take proceedings for the recovery of the residue. Secus in England, *Foakes* v. *Beer*, 9 App. Cas. 605. But see *Bidder* v. *Bridges*, 37 Ch. Div. 406.

P. 498, l. 15. See cases on the assignability of choses in action collected in 13 Bom. 44.

P. 503, l. 17, *add* Fire-policies also often contain a clause empowering the office to determine the policy by notice, refunding a rateable proportion of the premium. That such a clause is valid, see *Sun Fire Office* v. *Hart*, 14 App. Cas. 98.

P. 515, l. 25. As to the damages recoverable for a carrier's delay in delivering samples, see *Schulze* v. *G. E. Ry. Co.*, 19 Q. B. D. 30, following *Wilson* v. *Lancashire and Yorkshire Ry. Co.*, 9 C. B., N.S. 632.

— l. 35, *after* risks *insert* In the absence of special stipulations the contract is presumed to be governed by the law of the flag, *Lloyd* v. *Guibert*, L. R., 1 Q. B. 115; *Re Missouri Steam Ship Co.*, 58 L. T. R. 377.

P. 518, note 3, *add* In England, and probably in India, a stipulation in a bill of lading exempting the shipowner from liability for loss or damage arising from the negligence of the master and crew is valid, *Re Missouri Steam Ship Co.*, 58 L. T. R. 377.

P. 523, note 2, l. 5, *add* As to which see *Read* v. *Anderson*, 13 Q. B. D. 779, and *Cohen* v. *Kittell*, 22 Q. B. D. 680.

P. 524, note 3, l. 2, *insert* *Bhugwandass* v. *Netherlands India Sea and Fire Insurance Co.*, L. R. 16 I. A. 60 ('open cover').

P. 525, note 4, *add* As to the duty of persons effecting insurances to disclose all material facts, see *Blackburn* v. *Vigors*, 17 Q. B. D. 553.

P. 530, note 1, *add* English decisions, which would doubtless be followed in India, establish that maritime liens exist in the cases of seamen's wages, master's wages and disbursements, salvage, bottomry, and damage by collision.

P. 532, note 1. As to evidence of ratification from lapse of time without making objection, see L. R., 15 I. A. 220, at p. 225.

P. 533, note 3, *add* *Wilson* v. *Glossop*, 19 Q. B. D. 379 (necessaries supplied to an adulteress turned out of her husband's house).

P. 546, note 1, para. 3, *add* 7 Moo. I. A. 263, at p. 282.

P. 549, note 1, *add* A contract made by telegraph is completed at the place whence the telegram accepting an order is despatched, *Cowan* v. *O'Connor*, 20 Q. B. D. 640.

P. 553, sec. 11, note 1, l. 8, after C. J. *insert* and in 13 Bom. 50 it has been expressly held that a money-bond may be executed to a minor and may be sued upon.

P. 554, sec. 16, note 4, add another illustration in 10 All. 535. When a gift is alleged to have been made owing to undue influence, the questions are, (1) was it a thing which a rightminded person might be expected to do? (2) was it an improvident act? (3) was it a matter requiring a legal adviser? (4) did the intention of making it originate with the donor? 15 Cal. 684: S. C. L. R. 15 I. A. 81.

P. 557, sec. 19, Exception, note 1, *add* But where a vendor has been guilty of fraud by actively concealing a material fact, and the purchaser was thereby induced to purchase, the fact that he might with ordinary diligence have discovered the truth affords no answer to a suit to recover the purchase-money. Such a case does not fall within the Exception, 11 Mad. 419, at pp. 435 and 439.

P. 559, sec. 23, note 2, l. 15, *after* 398 *insert* to a partnership contrary to an ábkárí license for breach of which the licensee was liable to a statutory penalty, 12 Bom. 422.

— sec. 23, note 2, l. 18, *insert* to the sublease of a license to manufacture and sell country liquor, such sublease being in contravention of the terms of the license, 10 All. 577.

— sec. 23, note 4, l. 20, *after* 1056 *insert* 13 Bom. 126, 131.

P. 560, sec. 23, notes, col. 1, l. 5, *after* chap. 8 *insert* and in Bombay, 13 Bom. 42.

— sec. 23, note, col. 1, l. 10, *after* * *insert* 12 Mad. 118. In cases of champerty the question in India is whether the transaction is *bonâ fide* for the acquisition of an interest in the subject of litigation, or 'got up for the purpose merely of spoil, or of litigation, disturbing the peace of families, and carried on from a corrupt or other improper motive,' 12 Bom. 559, citing I. R. 1 I. A. 265. As to gambling in litigation and unconscionable bargains, see 11 All. 118 at p. 125: 11 All. 128.

— sec. 23, note, col. 1, l. 10, see 11 All. 57.

P. 566, sec. 30, note 4, *add* 12 Bom. 585.

P. 582, sec. 63, l. 3. As to extending the time stipulated for, &c., see 12 Bom. 658.

P. 583, sec. 65. See 11 All. 47, at p. 56: S. C. L. R. 15 I. A. 211

P. 585, note 2, *add* In the case of a lunatic, 'necessaries' covered the costs of his medical examination for the inquisition, *Brockwell* v. *Bullock*, 22 Q. B. Div. 567.

— sec. 69, note 6, *add* 11 Mad. 452, where the Court agreed with the minority in 14 Cal. 809.

P. 586, sec. 72, note 6, 'coercion,' *add* see 15 Cal. 656, following a decision of the Judicial Committee in 7 Cal. 648 (S. C. L. R. 8 I. A. 93). It seems that where *A* the purchaser of a mauza pays money into court to prevent the execution of *B*'s decree by attaching the mauza, the payment is not voluntary, and *A* may recover the money from *B*.

Sec. 72 is not exhaustive. It does not, for instance, include (and of course it does preclude) such suits as are provided for by the Limitation Act, art. 62, where *e. g.* money is paid by compulsion of law.

P. 592, sec. 74, note 2, l. 6, *add* 10 Cal. 305 : 11 Mad. 294.

— sec. 74. For cases in which stipulations were held to amount to penalties, see 12 Bom. 555 : 14 Cal. 248 : 12 Mad. 161.

P. 594, secs. 77, 78. The illustration to sec. 78 shows that price' means money, 11 Mad. 467.

P. 595, sec. 79, illustration: *add note*: [3]Where the price is made payable by instalments at certain stages, see *Seath* v. *Moore*, 11 App. Ca. 350.

P. 607. Another implied warranty has been established by the Indian Merchandise Marks Act, 1889, sec. 17.

P. 609, sec. 118, *add* 11 Mad. 459, at p. 468, where the transaction was held to be an agreement for exchange.

P. 614, sec. 131, note. This section does not affect the liability of the estate of the son of a deceased Hindú on a surety bond executed by the father, 11 Mad. 373.

— sec. 131, note 1, l. 4, *after* 462 *insert* 10 All. 531.

P. 622, sec. 151. See 11 Mad. 466.

P. 644, sec. 232. But see *Cooke* v. *Eshelby*, 12 App. Ca. 271, as to when a buyer can set off against an undisclosed principal a debt due from the agent.

P. 647, note 3, *add Badeley* v. *Consolidated Bank*, 38 Ch. Div. 238.

THE NEGOTIABLE INSTRUMENTS ACT.

P. 690, sec. 48, l. 4, note. A promissory note payable to order cannot be negotiated by mere execution of a deed of assignment, 11 Mad. 290.

THE TRANSFER OF PROPERTY ACT.

P. 727, note, *add* In *Hext* v. *Gill*, 7 Ch. 699, at p. 712, 'minerals' was defined as 'every substance which can be got from underneath the surface of the earth for the purpose of profit.' But now as to clay, see *Lord Provost of Glasgow* v. *Farie*, 13 App. Cas. 657.

P. 737, GIFTS, *insert* after paragraph 1, The chapter should have contained some rules as to incomplete gifts (as e. g. when a Government promissory note is delivered without endorsement) and when the Court will perfect the gift. See 12 Bom. 573.

— before line 3 from bottom *insert*, As to setting aside gifts when undue influence has been exercised by the donee, see *Allcard* v. *Skinner*, 36 Ch. Div. 145.

P. 749, para. (*g*). See the Indian Pensions Act, XXIII of 1871, secs. 11, 12, and *Lucas* v. *Harris*, 18 Q. B. D. 127.

P. 750, note 3, *add* When the land is bounded by a road or river, the transfer is presumed to pass the soil of the road or the bed of the river, *ad medium filum*, *Micklethwait* v. *Newlay Bridge Co.*, 33 Ch. Div. 133.

P. 766, sec. 52. Purchaser *pendente lite* bound by execution sale, L. R. 15 I. A. 97.

— sec. 52. A suit becomes 'contentious' within the meaning of this section when the summons is served, 15 Cal. 647; when the filing of the plaint is brought to the notice of the defendant, 12 Mad. 180.

P. 767, sec. 53. That the principle of 13 Eliz. applies to the Bombay mufassal, see 13 Bom. 297, at p. 300.

P. 771, sec. 55, note 1, l. 3, *after* 102 *insert* 11 Mad. 263.

— note 2, *add* And see *Coaks* v. *Boswell*, 11 App. Ca. 232.

P. 776, sec. 60, note 6, l. 7, *insert* In 11 Mad. 403 it was held that the breach of a condition in the mortgage-deed that on default of payment on a certain date the mortgage should be deemed an absolúte sale did not amount to an extinguishment of the right by act of parties.

P. 781, sec. 67, note 3, *add* Where the deposit is made without the mortgagee's knowledge, he is not thereby deprived of his right to foreclosure or sale, 11 Mad. 371.

An usufructuary mortgagee is not entitled, in the absence of a contract to that effect, to sue for a sale of the mortgaged property, 12 Mad. 109. The decision in 11 Mad. 88, cited supra, vol. ii. p. 1167, is clearly wrong.

— sec. 68. There is no rule in India that a mortgagee who has foreclosed, by suing the mortgagor on his personal covenant reopens the foreclosure.

P. 782, sec. 68, has of course no reference to cases where, after a suit has been brought and a decree obtained, the mortgagee seeks to sell any property in satisfaction of his decree, 15 Cal. 492, at p. 496.

— secs. 68 and 100. Section 100 does not make sec. 68 applicable to a person having a 'charge,' 15 Cal. 492.

P. 783, sec. 69, para. (1), l. 2. The proviso as to notice is not a condition which either suspends or defeats the power to sell, but only a direction in regard to its exercise, neglect of which affords a ground for compensation to the person (if any) damnified by the sale, 11 Mad. 201, at p. 203.

P. 784, sec. 72, only reproduces the doctrines which the courts of justice in India have uniformly adopted, per Mahmúd J., 10 All. 611.

P. 785, sec. 73, *add to note* 6, Section 73 does not deprive the mortgagee of his lien on the mortgaged property, 15 Cal. 552–553.

P. 792, sec. 87, para. (2), l. 5. Without such order the right to redeem is not taken away, 16 Cal. 246.

Pp. 792, 793, secs. 88, 89, 90. A mortgagee with a decree for sale of mortgaged property cannot treat it as one for money and then ask for attachment of the other property of his mortgagor, 10 All. 632.

P. 798, l. 5, 'mortgagor,' i. e. secs. 60–66.

P. 801, sec. 10, clause (*c*), l. 4. This, like the English covenant for quiet possession, is in the nature of a covenant for title and does not cover noise and other nuisances. See *Jenkins* v. *Jackson*, 40 Ch. Div. 71.

P. 803, clause (*m*), l. 4, 'wear and tear.' See *Crawford* v. *Newton*, 36 W. R. 54.

P. 806, note 7, *add* No forfeiture can be made unless every condition precedent has been strictly and literally complied with, *Jackson* v. *Northampton Street Tramways*, 55 L. T. R. 91.

P. 812, sec. 129, note 3, l. 3, *after* 1112 *insert* 15 Cal. 684 (doctrine of *mushâa*).

— sec. 129, note 3, l. 5, *after* 146 *insert* 13 Bom. 156.

— sec. 129, note 3, l. 6, Muhammadan gifts in the N. W. Provinces, see 11 All. 1.

— sec. 129, note 4, col. 2, l. 3, *add* 11 Mad. 246; 10 All. 407.

P. 814, sec. 135. This section 'does not apply where the money is recovered by suit after a contest as to the liability of the defendant. We think, however, that if the money paid by the plaintiff for the claim, with interest and expenses, were paid into court immediately on the suit being brought, that would be a payment within the meaning of the section, and would release the defendant from further liability,' 15 Cal. 436 (following 13 Cal. 145).

— sec. 136. The purchase by a pleader of the right to elephants caught in pits in the vendor's land does not come within this section, 11 Mad. 445.

— sec. 136, 'falling under the jurisdiction,' i. e. actually falling, not potentially, 11 Mad. 498, following 11 Mad. 61.

THE TRUSTS ACT.

P. 823, note 1, l. 5, *after* note *insert* As to Muhammadans, see 11 Mad. 283 (suit by one trustee of a mosque for a declaration of his title as against his cotrustee).

P. 840, note 5, *add* And see *Re Diggles*, 39 Ch. Div. 253.

P. 841, note 4, *add* It has, however, been held that the Secretary of State for India in Council and the Governor General in Council are incapable of being trustees, *Kinlock* v. *Secretary of State for India in Council*, 15 Ch. Div. 9, per James L.J.

P. 844, note 1. Prefix *Re Brogden*, 38 Ch. Div. 546.

P. 846, sec. 17, note 2, *add* See 11 Mad. 360, per Kernan J., as to the duty of trustees as between tenant for life and remainderman in case of expenditure for the improvement of the trust estate.

P. 850, sec. 26, clause (*b*). See as to the right to contribution from a co-trustee, *Bacon* v. *Camphausen*, 58 L T. R. 851.

P. 854, sec. 34, note 4, l. 1, *add* as to which see 7 Bom. 384: 12 Bom. 638.

P. 863, sec. 61, l. 5, 'proper indemnity.' See *Tudball* v. *Medlicott*, 36 W. R. 886.

THE EASEMENTS ACT.

P. 902, note 2, *add* The Indian Act makes no exception in the case of *B* knowing that *A* intended to use *A*'s land for building. See in England, *Birmingham &c. Banking Co.* v. *Ross*, 57 L. J. Ch. 106, at p. 109.

P. 904, note 3. Two English decisions on the expression 'actually enjoyed' in the corresponding section of the Prescription

Act (2 & 3 Wm. IV, c. 71, sec. 3) may be referred to: *Cooper* v. *Straker*, 40 Ch. D. 21 (discontinuous user), and *Courtauld* v. *Legh*, L. R. 4 Ex. 126 (uninhabited house).

P. 907, sec. 18, note 4, l. 7, *insert* 10 All. 359; and in the Panjáb, the Panjáb Record cited, 10 All. 381; and in the Lower Provinces of Bengal, 5 Suth. Civ. R. 208: 5 Ben. 676, at p. 681: 18 Suth. Civ. R. 14.

P. 925, sec. 58. As to the English law on this subject, and as to the corresponding duty on the part of the licensee, see *Corby* v. *Hill*, 4 C. B., N.S. 556, at p. 567, per Willes J.: see also *Hounsell* v. *Smyth*, 7 C. B., N.S. 731.

P. 929, note 4, *add* See Litt. secs. 486, 487.

THE SPECIFIC RELIEF ACT.

P. 938, *after* l. 25 *add* Under Bom. Act III of 1876, sec. 4, cl. 2, a Mámlatdár's Court may grant injunctions in the cases where an interruption of physical possession or enjoyment of lands, crops, trees, fisheries, or the use of water or ways.

P. 960, note 9, *add Phipps* v. *Jackson*, 35 W. R. 378.

P. 973, sec. 31, l. 10. If nothing remains to be done under an agreement there is no ground for rectifying it, *Caird* v. *Moss*, 33 Ch. Div. 22.

P. 975, sec. 35, note 6, *add* Another illustration is suggested by *Ladywell Mining Co.* v. *Brookes*, 35 Ch. Div. 400: *A* buys a mine for rs. 50,000. He then forms a company of which he becomes a director, and resells the mine to the company for rs. 200,000 without disclosing the fact of the property being his. The company is entitled to rescind the contract.

As to setting aside sales for unfairness, see *Fry* v. *Lane*, 40 Ch. Div. 312.

P. 976, sec. 38, note 2, *add* The Specific Relief Act gives no express power to indemnify the plaintiff in a successful suit for rescission against any obligations imposed on him under the contract. See in England, *Newbigging* v. *Adam*, 34 Ch. Div. 582.

— sec. 39. 'It is not because a man conveys property to which he is not entitled that the conveyance is absolutely void or ought to be cancelled or retained by the Court,' 15 Cal. 421.

P. 978, sec. 42, note 1. As to suits to stay a partition directed by the Collector under Ben. Act VIII of 1876, on the ground that a private partition has already been come to, see 16 Cal. 117.

P. 978, sec. 42, proviso, l. 2, 'being able,' i.e. at the commencement of the suit, 12 Mad. 136.

— sec. 42, illustration (*a*). As to the class of rights here referred to, see 15 Cal. 460, at pp. 464, 465.

P. 984, note 3, *add* 13 Bom. 252, at p. 259.

P. 986, sec. 54, illustration (*p*). The owner of land may sue for a declaration of right under sec. 42 against any one who has formally claimed to use the land as a public road and therefore endangered the title of the owner. Though such a declaration would not be conclusive against a stranger, it would be admissible against a stranger under sec. 42 of the Evidence Act, 15 Cal. 460, at pp. 467, 468.

P. 987, sec. 55, note 7, l. 1, *after* 181 *insert* 2 Bom. 133, at p. 138: 14 Cal. 189: 16 Cal. 252.

P. 988, note 1, *add* The jurisdiction ought only to be exercised in the clearest cases, *Law Quarterly Review*, iv. 483. As to injunctions against threats of legal proceedings by patentees, see *Challender* v. *Royle*, 36 Ch. Div. 425.

VOLUME II.

THE CODE OF CRIMINAL PROCEDURE.

P. 11, note 2, *add* 15 Cal. 527: followed in 12 Mad. 88.

P. 15, *after* l. 18, *insert* Act XIV of 1887, sec. 40 (Indian Marine), Act IV of 1889, sec. 15 (Merchandise Marks), *and after* l. 24 *insert* Act IV of 1889, sec. 15 (Merchandise Marks).

P. 60, sec. 1, cl. (*a*), see 15 Cal. 606.

— cl. (*e*) is repealed by Act V of 1889, sec. 4. Note (*e*) should therefore be cancelled.

P. 62, sec. 4, cl. (*i*), l. 1, 'proceedings,' i. e. the special proceedings contemplated by Chap. xxxiii, not proceedings in which European British subjects waive their right under that chapter, 12 Bom. 561.

— sec. 4, yadast amounting to a 'complaint,' though the complainant was not examined on oath, 11 Mad. 443,

P. 74, sec. 35. The rules for assessing punishment are contained in this section, and in the Penal Code, secs. 71, 72; 12 Mad. 39, per Muttusámi Ayyár J.

P. 77, sec. 45. For this section, in Lower Burma, a section is

substituted by sec. 5 of Act III of 1889 (*To provide a Village-system and amend the law relating to Rural Police in Lower Burma*).

— sec. 45, note 4. In this section land does not include 'house,' 12 Mad. 92.

P. 80, sec. 54, clause 2 (implement of housebreaking). See *Reg.* v. *Oldham*, 2 Den. C. C. 472: 3 C. & K. 249 (keys).

P. 82, sec. 59, par. 2, 'make over.' This is sufficiently complied with if the private arrester sends the offender in custody of a servant, 11 Mad. 480.

P. 94, sec. 98. To this section the Metal Tokens Act (I of) 1889, adds the following:—

'The provisions of this section with respect to—

(*a*) counterfeit coin,

(*b*) coin suspected to be counterfeit, and

(*c*) instruments or materials for counterfeiting coin,

shall, so far as they can be made applicable, apply, respectively, to—

(*a*) pieces of metal made in contravention of the Metal Tokens Act, 1889, or brought into British India in contravention of any notification for the time being in force under section 19 of the Sea Customs Act, 1878[1],

(*b*) pieces of metal suspected to have been so made or to have been so brought into British India, or to be intended to be issued in contravention of the former of these Acts, and

(*c*) instruments or materials for making pieces of metal in contravention of that Act.'

P. 107. Sec. 133 et seq. probably give a remedy for preventing infringement of a right of way belonging to a portion of the public, *e. g.* the inhabitants of a certain village, no less than in the case of a public way in the full sense of the term, 15 Cal. 460, at p. 466.

— sec. 133, note 1, l. 5, *insert* The magistrate must enquire into the *bona fides* of a claim of title to a way, and when he decides that the claim is made *malâ fide*, should state his reasons, which will be subject to revision by the High Court, 15 Cal. 564, at p. 571. In the Bombay Presidency the soil of public roads is vested in the Secretary of State, Bom. Act V of 1879, sec. 37, a provision which might usefully be extended to the rest of British India.

P. 108, sec. 134. The terms of this section are directory, not imperative, 16 Cal. 9.

[1] Act VIII of 1878.

P. 109, sec. 139. The order absolute does not preclude a civil Court from enquiring into the question of title, 15 Cal. 460, at p. 470, and cases there cited.

Pp. 109, 110, secs. 140, 142. 'Suit,' i. e. suit for damages, 15 Cal. 460, at p. 469.

P. 111, sec. 143, note 1, and P. 112, sec. 144, note 1, *add* Such orders are excepted from the section (435) conferring powers of revision.

— sec. 144, note 5, l. 2, *insert* But see 16 Cal. 80.

P. 112, sec. 145. Dispute as to right to collect rents, 11 Cal. 413, followed in 15 Cal. 527.

— sec. 145, note 6, *add* but has been followed in Madras, 12 Mad. 88.

P. 113, sec. 147. Where the dispute was between two kázís as to the right to perform a religious ceremony in a particular mosque, see 11 Mad. 323.

— notes, col. 1, l. 2, *after* 521 *insert* and see 16 Cal. 281.

P. 115, note 1, *add* As to offences generally, see the Police Act, V of 1861, sec. 23.

— sec. 152, l. 3. As to private property, see Act V of 1861, sec. 23.

P. 119, sec. 164. This does not apply to statements taken in the course of a police investigation made in Calcutta, 15 Cal. 595, at p. 606.

— sec. 164, note 5, *add* See sec. 364, and consider 15 Cal. 607.

Pp. 124, 125. Secs. 174, 175, 176 are modified in their application to the town of Madras by Act V of 1889, sec. 4.

P. 130, sec. 188, para. 3, see 13 Bom. 147, where the offence was committed in Portuguese territory.

P. 133, sec. 195, note 3. The sanction does not lapse by the death of the grantee, 12 Mad. 47.

— sec. 195, cl. (*b*), 'such Court.' Notwithstanding sec. 1, cl. (*c*), this includes a Village Munsif in Madras trying a cause, 11 Mad. 375.

P. 134, sec. 195, note 2, *add*. Though a superior Court can revoke a *sanction* granted by a subordinate Court, no power is given to it to set aside a *complaint* duly made by a subordinate Court, 13 Bom. 109, at p. 112.

— sec. 195, note 3. The rule does not apply to a *sanction*, 7 All. 871.

— sec. 195, note 4, l. 4, *after* 314 *insert* In the N. W. Provinces

(notwithstanding the Rent Act of 1881) the Court of the District Judge may be taken to be for the purpose of this section the Court to which appeals from the decisions of the Collector ordinarily lie, 10 All. 582.

P. 166, sec. 289, para. 3, l. 5, 'record a finding,' i.e. If at a certain stage of a sessions trial the Court is satisfied that there is not upon the record any evidence which, even if it were perfectly true, would amount to legal proof of the offence charged against the accused, then the Court has power, without consulting the assessors, to record a finding of not guilty. But the Sessions Judge, acting with the aid of assessors, has no such power, because only he considers the evidence unsatisfactory, untrustworthy, or inconclusive, 10 All. 414, at p. 417, per Tyrrell J.

P. 167, sec. 292, note 2, l. 4, *after* 245 *insert* But in 11 Mad. 339, where documentary evidence was put in by the accused during the case for the Crown and before examination of the accused, it was held that the Crown had the right of reply.

P. 169, note 3, *add* Or whether the 'reasonable suspicion' (sec. 54, paras. 1, 4) justifying an arrest existed, *Howard* v. *Clarke*, 20 Q. B. Div. 558.

P. 182, sec. 337, par. 2, 'Every person accepting,' &c. This means that, for all purposes (subject to failure to satisfy the conditions of pardon as provided for by sec. 339), such person ceases to be triable for the offence or offences under inquiry, or (with reference to sec. 339) for any other offence of which he appears to have been guilty in connexion with the same matter, while making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence, 11 All. 79, at p. 89, per Straight J.

P. 197. Sentences of death passed by the Recorder of Rangoon on European British subjects are submitted for confirmation to the High Court at Fort William, Act XI of 1889, sec. 45.

P. 203, sec. 399. Wherever the Reformatory Schools Act, V of 1876, is in force, this section is repealed so far as it enables magistrates not of the first class to send male youthful offenders to reformatory schools, 12 Mad. 94.

— *add to note* 3, Act V of 1876 was extended to the Madras Presidency in August 1887.

P. 207, sec. 404, note 2, cl. 1, l. 9, *after* 230 *insert* followed in 15 Cal. 712, and in 11 Mad. 359.

— cl. 2, l. 4, *insert* As to the principles on which the High Court will grant leave to appeal, see 10 Bom. H. C. 75, per Westropp J., and 15 Cal. 608, note (1).

P. 207, *add to this note*: See L. R. 10 I. A. 171, and *Riel's Case*, L. R. 10 App. Ca. 675. In the latter case (from Canada) the Judicial Committee said that no leave to appeal in criminal cases would be given except where some clear departure from the requirements of justice is alleged to have taken place.

— sec. 406. See 9 Cal. 878.

P. 216, sec. 437. It is expedient, but not necessary, that notice should be given to the accused before an order under this section can be passed, 15 Cal. 608.

P. 217, sec. 439, note 10, *add* 8 Bom. 197; but see 10 Cal. 1047: 12 Bom. 390.

P. 223, sec. 453, note 1. This section and sec. 454 should have been placed at the beginning of ch. xxxiii.

P. 224, sec. 454, note 1, l. 2, *after* 'procedure' *insert* 12 Bom. 561.

P. 235, sec. 487, l. 4, 'shall try any person.' These words include the hearing of an appeal, 16 Cal. 121.

— l. 7, 'judicial proceeding.' See sec. 4, cl. (*d*).

— sec. 488, note 7. The Magistrate of the first class must himself make the enquiry, 11 Mad. 199.

P. 240, sec. 494, last word. He cannot be *discharged*, 12 Mad. 35.

P. 243, sec. 503, note 1, l. 6, *after* 92 *insert* 15 Cal. 775.

P. 253, sec. 526 A, note 1. See 15 Cal. 459, 460. When the Court orders prisoners to be discharged on bail it may call for a report from the police as to the sufficiency of the bail; but the duty of deciding as to its sufficiency or otherwise is with the Court itself, and not with the police, 15 Cal. 457.

— sec. 527. For the purposes of this section the Court of the Recorder of Rangoon shall be deemed to be a High Court, Act XI of 1889, sec. 48.

P. 256, sec. 533, note 1: *i. e.* if the Court finds that the Magistrate has *not* done all his duty, the Court may then take evidence to show that the prisoner has done all that was necessary for him on his part to do. No evidence need be taken to prove that the Magistrate *has* done his duty, 15 Cal. 601.

P. 375, antepenultimate line. By notification in the *North-Western Provinces and Oudh Gazette*, Dec. 13, 1884, Part I, p. 598, the Local Government directed that from the commencement of 1885 in the Allahabad, Benares and Lucknow Districts, when the accused has been committed to the Court of Session by a magistrate exercising jurisdiction in the District, the following offences should be tried by jury:

i. Kidnapping and Abduction, secs. 363–369, 372, 373 of the Penal Code.

ii. Rape, sec. 376.

iii. Theft, secs. 379–382.

iv. Robbery and dacoity, secs. 392–395, 397, 398, 399, 401.

v. Criminal misappropriation, secs. 403, 404.

vi. Receiving stolen property, secs. 411–414.

vii. Mischief, secs. 426–432, 434, 435, 436, 440.

viii. House-trespass, secs. 448, 450–462.

ix. Offences relating to marriage, secs. 493–498.

x. Abetments of and attempts to commit any of the above-mentioned offences, chaps. v. and xxiii.

P. 376, penultimate line. By notification in the *North-Western Provinces and Oudh Gazette*, Dec. 13, 1884, Part I, p. 598, the Local Government cancelled the notification here referred to, and directed that in trials by jury before Courts of Session in the N. W. Provinces and Oudh the jury should consist of five persons.

P. 377, l. 1. By notification in the *Panjáb Gazette*, Feb. 8, 1883, Part I, p. 53, the Local Government modified the notification here referred to, and directed that in trials by jury before Courts of Session the jury should consist of nine persons in the Districts of Delhi, Simla, Lahore, Rawalpindi and Peshawar; of five persons in the Districts of Ambála, Jalandhar, Amritsar, Sialkot, Ferózpur and Multán; and of three persons in all other Districts of the Panjáb.

— l. 7. By notification in the *Central Provinces Gazette*, Jan. 2, 1873, Part I. A, p. 18, the Local Government directed that juries, in trials by jury before the Court of Session, should consist of five persons in the Districts of Nágpur, Jabalpur, Ságar, Raipur and Hoshangábád, and of three persons in all other Districts of the Central Provinces.

— By notification in the *Burma Gazette*, Feb. 5, 1876, Part II, p. 17, the Local Government directed that in all trials by jury before the Court of the Recorder of Rangoon and the Judge of the town of Moulmein the jury should consist of five persons.

THE CODE OF CIVIL PROCEDURE.

P. 393, l. 3, *to* Courts *add note*: See the notes to the *Duchess of Kingston's Case*, 2 Smith's L. C. 812, 830.

P. 404, § 2, *add* But the Court should not raise an important issue (e.g. as to whether a certain deed was signed under pressure) which has not been raised by the parties themselves, 10 All. 627.

P. 424, l. 31, *to* 'assume' *add note*: See *Lopez* v. *Burslem*, 4 Moore, P. C. 300–305: *Cope* v. *Doherty*, 4 K. & J. 369: 2 De G. & J. 614.

P. 425, l. 2, *after* (sec. 433) *insert* This is the only express provision in the Code as to suits *against* aliens. Such suits, it has been held, do not lie where the cause of action has arisen, and the alien resides, outside the jurisdiction, even though he carries on business in British India through an agent, 12 Bom. 507.

P. 467, note 2, l. 14, *after* 273 *insert* an order refusing to stay execution, 12 Bom. 279.

P. 471, note 2. Madras Reg. 4 of 1816 is now repealed and replaced by Mad. Act of 1889 (*to consolidate and amend the law relating to the Courts of Village Munsifs in the Presidency of Fort St. George*).

P. 473, sec. 11. A suit to establish a right to an hereditary office, such office being a trust for performance of particular duties in a temple, lies though the right bring no profit to those claiming it, 11 Mad. 450, affirming 15 Cal. 159.

Suit for injunction to prevent defendant from interfering with plaintiff's hereditary right to present a certain person in a certain temple with water and a golden crown, 11 Mad. 450.

P. 474, sec. 11, note 1, *add* It is an established principle that when by an Act of the legislature powers are given to any person for a public purpose from which an individual may receive injury, if the mode of redress is pointed out by the Statute, the jurisdiction of the ordinary Courts is ousted, and in case of injury, the party cannot proceed by action, 12 Mad. 105 (Madras Forest Act, 1882): 7 Cal. 388 (Land Acquisition Act, X of 1870): 13 Bom. 83 (Bombay Hereditary Offices Act, Bom. Act III of 1874, secs. 18, 25).

Pp. 474–476, sec. 13. This section only reproduces in a codified form the law of estoppel by record, which is set out at length in *the Duchess of Kingston's case* and the notes thereon in Smith's Leading Cases, vol. ii. p. 812, at p. 830 (9th ed.), 12 Bom. 463.

P. 475, sec. 13, ll. 1, 2, 'directly and substantially in issue,' 16 Cal. 173, S. C. L. R. 15 I. A. 186: 'substantially in issue,' 13 Bom. 242, at p. 248.

— sec. 13, decision as to validity of Hindú will, 16 Cal. 103: S. C. L. R. 15 I. A. 159.

— sec. 13, l. 3, 'same parties,' 11 Mad. 204, where the issue was decided in a former suit, in which the parties were rival defendants claiming under different titles.

— sec. 13. As to the effect of a judgment that a will has been revoked to bar, between the parties, any claim founded solely on the will, see 15 Cal. 808.

— note 4, l. 6, *after* 83 *insert* 13 Bom. 224, at p. 228.

— note 6, col. 2, l. 2, *after* 136 *insert* But in order to see what was in issue in a suit, or what has been heard and decided, the judgment must be looked at, 16 Cal. 183, S. C. L. R. 15 I. A. 193.

P. 476, sec. 13, note 1. In 12 Bom. 465 Scott J. thought that Expl. III referred to the case where several heads of relief independent of each other are claimed, put in issue, and duly controverted, and one of them is neither granted nor refused: otherwise the principle that an estoppel must be certain (see Comyn's Digest, 'Estoppel') would be violated.

— sec. 13, dismissal of rent-suit involving title, barred subsequent suit, 15 Cal. 756.

— *Explanation IV*, see 11 All. 148, at p. 159.

— *Explanation V*, l. 2, 'in common,' see 10 All. 411.

— *Explanation V*, note 4, l. 1, *after* 223 *insert* 11 Mad. 191.

— *Explanation VI*, see 13 Bom. 224, where it was held that Court of 'competent jurisdiction' includes a foreign competent Court.

P. 480, sec. 20, para. 2. This power to stay proceedings must be exercised with extreme caution, 13 Bom. 178, at p. 182, citing *M'Henry* v. *Lewis*, 22 Ch. Div. 397, at p. 406, and *Peruvian Guano Co.* v. *Bockwoldt*, 23 Ch. Div. 225, at pp. 229, 230.

P. 484, note 7, *add* In England it seems that one of several contractors has a right to have his co-contractors joined as defendants in an action against him, *Pilley* v. *Robinson*, 20 Q. B. Div. 155.

P. 490, sec. 43, cl. 2, note 3. But a right which a litigant possesses without knowing or ever having known that he possesses it, can hardly be regarded as a 'portion of his claim' within the meaning of Act VIII of 1859, sec. 7 = sec. 43 of the Code of 1882.

— note 4, *add to para. 2*, A lessor may sue his lessee for mesne profits and not for the land, and may afterwards sue for the land, 11 Mad. 210, or he may sue for the land and afterwards for the mesne profits, 9 Cal. 283.

P. 494, sec. 50, cl. (*d*). Thus when fraud is charged against the defendant the plaintiff must set forth the particulars of the fraud which he alleges, 15 Cal. 533, S. C. L. R. 15 I. A. 119, following *Wallingford* v. *Mutual Society*, 5 App. Ca. 697, per Lord Selborne.

P. 497, sec. 54, note 4, l. 3, *after* 192 *insert* Notwithstanding sec. 12 of the Court Fees Act, an appeal lies in every case falling under sec. 54 of the Code, 11 All. 91.

— *add to the note*, 11 All. 187, at p. 189.

Pp. 497–8, sec. 57. This only prescribes the procedure to be followed on the presentation of plaints and before issue of summons. It does not bind an appellate court, 11 Mad. 482.

P. 509, sec. 102. Dismissal of a suit under this section is not intended to operate in favour of the defendant as *res judicata*. Read with sec. 103, it imposes a certain disability upon the plaintiff, and precludes him from bringing a fresh suit in respect of the same cause of action, 16 Cal. 98, at pp. 101, 102.

P. 510, sec. 103, l. 4, 'sufficient cause.' See an illustration, 13 Bom. 12.

— note 2, *add* See 15 Cal. 422, where the circumstances were identical, though different relief was claimed. See also L. R. 15 I. A. 156, where the suit, being founded on a different and subsequent cause of action, was not barred by section 103.

P. 535, sec. 179, note 2, *add* A preliminary issue (such as whether the plaintiff is not, by reason of certain proceedings, debarred from bringing the suit) is analogous to a demurrer, and in such case the defendant begins, 12 Bom. 454, at p. 459.

P. 547, sec. 223 (*c*), extends rather than limits the power of a Court to execute its own decrees, 15 Cal. 667.

P. 550, sec. 230, note 3, *add* There is no exception of cases arising under sec. 490; see 12 Bom. 400, at p. 406.

— sec. 230, cl. (*b*), note 9, *add* 16 Cal. 16, following 4 All. 155.

P. 551, sec. 232, l. 4. This discretion must be exercised reasonably. The mere existence of a cross claim by the judgment-debtor against the decree-holder [leg. the assignor of the decree] is no reason for refusing issue of execution on the application of the assignee, 15 Cal. 446, at pp. 448, 449.

P. 552, sec. 234, note 5, l. 2, *after* 255 *insert* 6 Mad. 180: 12 Mad. 90.

P. 553, para. 1, sec. 234. Two kinds of property may be attached: first, property of the ancestor found in the hands of the heir, and, secondly, property of the heir, from whatever source derived, to the extent to which he has wasted the assets descended to him without satisfying the debts of the deceased, 16 Cal. 1, at p. 5, per Wilson J.

P. 556, sec. 243, l. 2, 'such Court,' see 10 All. 389.

— sec. 244. As to the questions contemplated by this section, see 11 Mad. 413: see also 13 Bom. 34.

— cl. (*c*), 'or their representatives,' see 16 Cal. 1.

— note 11, *add* 10 All. 570 (legality and effect of purchase by judgment-debtors of right of some of the decree-holders in the property to which the decree relates).

— note 13, l. 4, *insert* the assignee of a preëmptor, 10 All. 354.

P. 557, sec. 244, cl. (*c*), note 1, l. 3, *insert* 12 Bom. 449.

P. 561, sec. 253. This section does not apply to a surety on behalf of an appellant for the costs of an appeal, 15 Cal. 497, dissenting from 2 All. 604.

— l. 2, 'in an original suit.' The Bombay High Court think that these words may be treated as superfluous, 12 Bom. 411.

P. 562, sec. 257. This section does not apply to costs awarded on applications or under orders which are not decrees within the definition in sec. 2; 12 Mad. 120, at p. 123.

— sec. 257 A, para. 1, l. 3, 'sanction,' see 12 Bom. 499: 13 Bom. 54.

— note 5, l. 4, see 13 Bom. 54.

P. 563, sec. 258. See 11 Mad. 469, where there was no certified adjustment of the decree.

— note 6. The High Court of Madras agrees with the High Courts at Calcutta and Allahabad, see 8 Mad. 277, and 12 Mad. 61.

— note 7, l. 5, *add* 12 Mad. 61.

P. 564, sec. 259, *add to note* 1, 11 Mad. 327.

P. 567, sec. 265, see 15 Cal. 198. The meaning of this section is that where a revenue-paying estate has to be partitioned into several revenue-paying estates, that partition must be carried out by the Collector, because the revenue is affected, and it is for the Collector to say how much revenue shall be assessed upon each portion of the estate, so that there may be a proper security for that revenue, 16 Cal. 203, at p. 205.

P. 567, sec. 265, note 3, l. 1, *after* 539 *insert* 12 Bom. 371.

— sec. 266, l. 8, 'immoveable.' This includes standing crops, 11 Mad. 193.

P. 568, sec. 266, cl. (*c*), note 4, l. 3, *after* '531' *insert* but see 12 Bom. 363, where the occupant was a *bhágdár*.

— cl. (*f*), note 7, l. 1, *after* 395 *insert* 12 Bom. 366 (*jotishi vritti*).

P. 569, sec. 266, cl. (*k*), 'expectancy,' see 10 All. 462, at p. 465.

P. 574, sec 274, note 3. As to proclamations when the property is broken up into lots, see 12 Bom. 368.

P. 575, sec. 276, note 4, *add* followed in 15 Cal. 771.

P. 576, sec. 280, note 3, *add* 15 Cal. 521, at 526, where the Judicial Committee seemed to think that the extent to which the investigation should be carried depended on the circumstances of each case.

— secs. 280, 281. These sections lay down the principles upon which the Court is to decide whether or not the property is liable to attachment, 15 Cal. 443.

— sec. 283, l. 2, 'passed,' see 15 Cal. 674. 'The right which he claims to the property' means 'the right which is claimed in that proceeding in respect of the property,' ibid. 679.

— sec. 283, note 5, l. 2, *after* 659 *insert* As to the essential conditions precedent to a suit under sec. 289, see 10 All. 479 and see 11 All. 74.

— note 6, *add* 'When the judgment-debtor claims the property which is the subject of the attachment, either on his own account as his own property, under whatever right, or as the representative of third parties, in which representative capacity he has been sued, the question is properly one between the parties to the suit under sec. 244. But where the judgment-debtor raises the claim or objection on behalf of third parties who are not represented before the Court, the order made must be regarded as an order under sec. 280, and the only mode in which that order can be contested is a regular suit as provided by sec. 283,' 15 Cal. 442.

P. 577, sec. 286, note 6. The sale of moveable property should ordinarily be held at some place within the jurisdiction of the Court directing it, 13 Bom. 22, at p. 25.

P. 580, sec. 294, l. 2. As to permitting a mortgagee to bid, see 16 Cal. 132, at p. 137. On purchasing he does not stand in a fiduciary position towards his mortgagor, ibid. p. 136.

P. 582, sec. 295, note 1, l. 1, *after* 472 *insert* 13 Bom. 171, and *after* 321 *insert* 11 Mad. 356.

— note 5, l. 1, *after* 42 *insert* followed in 13 Bom. 154.

P. 586, sec. 306, last line, 'forthwith.' The sale is not to be adjourned, 16 Cal. 33, at p. 38.

P. 587, sec. 311, note 1, *add* overruled by 15 Cal. 488, where held that a person claiming by title paramount to the judgment-debtor is not within the meaning of 'any person,' as his title is not affected by the sale.

— note 3, *add* 16 Cal. 33, dissenting from 5 All. 316.

— note 4, *add* But in 10 All. 506, at p. 514, Mahmúd J. thought

that the words 'material irregularity in publishing or conducting' should be liberally construed, and held that they covered absence of attachment at time of sale.

— note 5, l. 1, *after* 658 *insert* 12 Mad. 19: S. C. L. R. 15 I. A. 171.

P. 588, sec. 315, note 8, *add* 11 Mad. 269.

P. 589, sec. 316, note 3, *add* as to third parties, see 15 Cal. 552.

— sec. 317, note 6, *add* Where the purchaser acknowledges that his purchase was benámí, and does some act indicating intention to waive his right, see 11 Mad. 234.

P. 590, sec. 320 et seq, note 4, *add* The object is to give the Collector, speaking generally, a free hand to deal with the property in the best interests of the parties concerned. But he must carry out the decree subject to the discretion given to him by sec. 321 and subject to the provisions contained in secs. 322 B, 322 C, and 322 D. He has no power to decide that the property directed by the decree to be sold was not the property of the judgment-debtor, 11 All. 94, per Edge C.J.

P. 599, sec. 332, note 8, see 13 Bom. 213.

P. 605, chap. xx. Nothing in this chapter applies to any Court having jurisdiction in Rangoon or Maulmain, Act XI of 1889, sec. 52.

P. 605, sec. 344, note 4, *add* and the Judicial Commissioner in Chutiá Nágpur, 16 Cal. 13, following 6 Mad. 430 and 8 Bom. 196.

P. 607, sec. 351, cl. (*c*), note 6, 'unfair preference,' *add* 12 Bom. 424.

P. 612, sec. 360, note 1, *add* and 11 Mad. 301.

P. 613, note 4. *A* sues *B* for breach of promise of marriage and *A* dies (*Chamberlain* v. *Williamson*, 2 M. & S. 408), or *B* dies (*Finlay* v. *Chirney*, 20 Q. B. D. 494). The right to sue does not survive.

P. 618, note 3. See correction in 11 All. 193.

P. 630, sec. 407, notes, col. 1, l. 7, *after* 661 *add* 10 All. 467.

P. 633, sec. 424, note 3, *add* Nor where the Collector merely acts as guardian of an infant defendant, 11 Mad. 317.

P. 639, sec. 442, note 8, *add* The Courts, as a rule, only strike the plaint off the file, where it appears, on the face of the plaint, that it was filed by a person who was a minor, or when it is proved that it was filed with the knowledge that the plaintiff was a minor and with the intention of deceiving the Court and

evading payment of costs in case the plaintiff failed in the claim, 13 Bom. 7, at p. 11.

Neither sec. 441 nor sec. 442 gives any authority to a Court to make a minor's estate liable for costs, 13 Bom. 234.

P. 640, sec. 445, 'any person.' A married woman may therefore be a next friend; otherwise in England, *Re Duke of Somerset*, 35 W. R. 273.

P. 643, note 1, *add* So in England, *Re Duke of Somerset*, 35 W. R. 273.

— note 4, l. 3, *after* sanctioned *insert* It would be wrong if a next friend could, to save his own costs, surrender the minor's right to appeal, *Rhodes* v. *Swithenbank*, 22 Q. B. Div. 577.

P. 643, sec. 458, note 2, l. 1, *after* 391 *insert* 12 Bom. 553.

P. 645, sec. 468. A Commissary of Ordnance must serve summons on a sub-conductor, 11 Mad. 475.

P. 653, sec. 490. This section does not by implication confer upon a decree-holder who has attached before judgment the right to come in under sec. 295 and share in the distribution of the property which he has attached. It merely takes away the necessity for a reattachment. The attachment before judgment enures and becomes an attachment in execution, 12 Bom. 400, at p. 405.

P. 658, sec. 503, clause (*d*), line 4. The receiver may prove a debt against a bankrupt's estate, *Armstrong* v. *Armstrong*, L. R. 12 Eq. 614.

— sec. 503, note 2, *add* and see 15 Cal. 818.

P. 659, note 1, *add* He is accountable only to the Court and is not in a fiduciary relation to the persons interested in the property, see *Re Irish*, 40 Ch. Div. 49, where the Court refused to restrain a receiver who had been managing a business under direction of the Court from soliciting orders from the present customers.

P. 661, note 9, *add* As to interfering with an arbitrator while the arbitration is proceeding, see *Kirk* v. *E. & W. India Dock Co.*, 55 L. T. R. 245.

— sec. 509, clause (*c*). As to the mode of appointing an umpire, see *Pescod* v. *Pescod*, 58 L. T. R. 76.

P. 664, sec. 521, cl. (*c*) and penultimate line, 'made' does not include 'filed,' 13 Bom. 119.

— note 5, *add* So are absenting oneself from a meeting where witnesses are examined by the other arbitrators, and examining witnesses in the absence of one of the arbitrators, 12 Mad. 113.

P. 671, sec. 539, note 3, *add* 11 All. 18, at p. 22, per Straight J. As to the interest necessary to support a suit under this section, see 12 Mad. 157.

P. 674, sec. 544, *add to note* 3: It applies only to appeals by parties arrayed on the same side of a litigation in the original Court, and against whom judgment on a common ground has been passed, and only some of them appeal from such judgment, 11 All. 35, at p. 39, per Mahmúd J.

P. 675, sec. 545, note 5, *add* An order by a District Judge refusing to stay execution is a 'decree,' and therefore appealable, 12 Bom. 279.

P. 677, sec. 549, note 1, l. 5. This power ceases on the expiration of the term mentioned in the original order, 11 Mad. 190.

P. 680, sec. 562, para. 1, see 10 All. 289.

P. 682, sec. 568, note 5, *add* As to the circumstances under which an Appellate Court will *not* admit additional evidence to be produced under this section, see 15 Cal. 765.

P. 687, sec. 583, l. 2, 'restitution of mesne profits,' see 11 Mad. 261.

— sec. 583, note 2, *add* As to proceeding against a person who has become a surety under sec. 546 for the fulfilment of the decree on appeal, see 12 Bom. 411.

P. 688, sec. 586. Second appeal, 11 All. 13. As to 'cognisable in Courts of Small Causes,' see 12 Mad. 139.

— note 2, l. 8, *after* 18 *insert* But see 12 Mad. 116.

P. 689, sec. 588, cl. (8). Where an application under sec. 311 to set aside an execution-sale was dismissed for default, there is no appeal against an order refusing to restore the application to the file, 11 Mad. 319, following 10 Bom. 433.

P. 693, para. 3, l. 1 (sec. 596), 'affirms,' see 16 Cal. 287.

P. 701, sec. 620. As to the costs of a reference, see 15 Cal. 507.

— sec. 622. In 15 Cal. 449 (following 11 Cal. 6?), Petheram C.J. said that 'the meaning of this section is that, whenever a Court has jurisdiction to decide a question, whether it is a question of law or a question of fact, its decision on that question is not revisable by this Court. Unless it is a matter in which there is an appeal, its decision on that matter is final, and that decision cannot be reviewed by this Court because it is wrong either on the question of law or the question of fact.'

P. 701, sec. 622, l. 6, 'material irregularity,' see illustrations in 11 Mad. 303 and 322.

— sec. 622, note 3, *add* 11 Mad. 220.

P. 702, sec. 622, note 1, *add to para.* 1: 12 Bom. 617, where the subordinate Judge had determined an issue which did not really arise in the case, and based his decision on that determination.

P. 705, sec. 629, l. 2. As to the meaning of 'final,' see 15 Cal. 432, following Ben. F. B. 367, where Peacock C.J. said that the words 'shall be final' in sec. 378 of the Code of 1859 were used with reference to appeal, 'that is to say, that no appeal shall lie from an order of rejection, upon the ground that a review ought to have been admitted, or *vice versa.*'

P. 711, sec. 647, note 4, col. 2, l. 3, *after* 416 *insert* cases decided by a District Judge under the Land Acquisition Act, 16 Cal. 31.

P. 712, sec. 647, notes, col. 1, l. 1, *after* 433 *insert* 11 Mad. 319, at p. 321.

THE EVIDENCE ACT.

P. 828, l. 19, *after* 718 *insert* see *Reg.* v. *Gloster*, 16 Cox, C. C. 471.

P. 831, l. 8, *after* legitimacy *insert* of a child born in wedlock.

P. 832, sec. 12. Whether it may be proved against him in a civil suit for defamation seems doubtful; see 10 All. 425, where the judges differed.

P. 835, note 4, *add* A recent case on rebuttable presumptions will be found in L. R. 16 I. A. 6, where the Judicial Committee held that where a tenancy was originally granted for a particular purpose (e.g. keeping a stud of horses), and the purpose failed, there was a presumption that the tenancy ceased.

P. 841, note 1, *add* As to corroborating retracted confessions, see 12 Mad. 123.

P. 862, l. 1, sec. 13, cl. (*a*), 'asserted.' See 12 Mad. 9.

— notes, col. 1, l. 9, *add* The most satisfactory evidence of an enforcement of a custom is a final decree based on the custom 10 All. 585, following 1 All. 440.

P. 867, sec. 16, illus. (*b*). See 15 Cal. 681 (service of notice to quit by registered letter).

P. 871, sec. 25, note 3, *add* See 15 Cal. 589.

— sec. 26, 'unless it be made in the immediate presence of a Magistrate,' see 15 Cal. 607.

— sec. 27. As to the test of the admissibility of information received from an accused person in the custody of a police officer, see 12 Mad. 153.

P. 881, sec. 42, 'matters of a public nature,' 12 Mad. 9, at p. 13.

— *add to note* 1: A declaration under the Specific Relief Act, sec. 42, though not conclusive against a stranger, would be admissible against him; and if the suit were fairly and properly conducted, the decision would be practically conclusive in any subsequent proceeding, 15 Cal. 468, per Wilson J.

P. 882, sec. 45, note 7, *add* 15 Cal. 589.

P. 903, sec. 92, ll. 5, 6, 'between the parties to any such instrument.' This means between the party (or parties) on one side and the party (or parties) on the other, not between the parties on one side only.

— sec. 92, note 2, l. 1, *after* 333 *insert* 12 Bom. 335.

— sec. 92, notes, col. 2, l. 15, *after* 159 *insert* 5 Mad. 6, at p. 8: or that *A* really bought certain property for himself though the sale-deed recited that he had bought it benámí for *B*, 11 Mad. 213.

P. 904, sec. 92, prov. 1, note 4, *add* but see 12 Bom. 585.

P. 905, sec. 92, prov. 5. In the case of trade-contracts such usage usually exists, 11 Mad. 462.

P. 913, sec. 114, illus. (*e*), note 9, *add* On the other hand, where it is proved that an execution-sale took place and possession was given, the Court should presume, after long lapse of time and possession by a mortgagee of the purchaser, that the sale was duly made, 11 Mad. 296.

P. 917, sec. 118. In determining the question of competency, an Indian Court has not to enquire into the witness's religious belief, or as to his knowledge of the consequences of falsehood in this world or the next, 11 All. 183, per Straight J.

P. 919, note 4, *add* The Court itself should prevent State secrets from being disclosed, *Hennessy* v. *Wright*, 21 Q. B. D. 509, at p. 515.

P. 922, sec. 132, note 7, *add* followed in 12 Bom. 440.

P. 929, note 1, *add* It is otherwise when *B* is asked whether she had connexion on other occasions with *A*, *Reg.* v. *Riley*, 18 Q. B. D. 481.

THE OATHS ACT.

P. 938, sec. 6. See 10 All. 207. Having regard to the language of the Oaths Act, neither a Judge nor a Magistrate has any option, when once he has elected to take the statements of a person as evidence, but to administer either an oath or an affirmation, as the case may require, 11 All. 185.

P. 939, sec. 13, note 3, l. 2, *after* 294 *insert* dissentiente Jackson J., and see 10 All. 207 contra.

THE LIMITATION ACT.

P. 957, preamble, l. 2, 'suits.' This does not include claims under a penal enactment such as Act XIII of 1859, sec. 2; see 11 Mad. 332.

The Limitation Act has been expressly declared to apply, (*a*) to suits and applications under the Madras Village Courts Act, provided that no such suit or application shall be entertained after three years from the time when the right to sue or apply first accrued (Mad. Act I of 1889, sec. 20), and (*b*) to appeals to the Courts of Commissioners in Burma (Act XI of 1889, sec. 18).

— note 1, l. 8, *after* 375), *insert* under the Criminal Procedure Code, sec. 195; 10 All. 350.

P. 959, sec. 3, l. 7, 'derives his liability to be sued,' see 13 Bom. 160, at p. 165.

P. 960, sec. 4, l. 2, 'appeal presented,' *i. e.* in manner prescribed by sec. 541 of the Code of Civil Procedure, 16 Cal. 250.

P. 961, sec. 5, note 9, l. 2, *after* 260 *insert* nor is presenting an appeal within the prescribed period to a wrong Court, 10 All. 524, at p. 529: 10 All. 587.

P. 962, sec. 5, notes, col. 1, l. 1, *after* 446 *insert* nor, of course, is mere ignorance of the law, 12 Bom. 320.

— sec. 6, note 1, *add* 12 Mad. 1.

P. 964, sec. 10, ll. 4, 5, 'assigns for valuable consideration,' such as e. g. an auction-purchaser at a sale in execution of a decree, 15 Cal. 703.

— sec. 10, note 6, col. 1, l. 5, *insert* a dharmakarta is a trustee, 11 Mad. 274, following 6 Mad. 54.

— note 6, col. 2, l. 2, *after* 455 *insert* 16 Cal. 161.

P. 966, sec. 14, l. 2, 'suit,' not appeal or application (p. 960).

P. 967, l. 4, sec. 14, 'other cause of a like nature,' 10 All. 587,

at p. 598. *To note* 4 *add* or preferring an appeal to a wrong Court by mistake of law, 10 All. 587.

— sec. 14, note 4. Where the plaintiff himself withdraws the suit as being defective for want of parties, with liberty to bring a fresh suit, see 12 Bom. 625, at p. 633.

P. 970, sec. 20, l. 2, 'prescribed period,' i. e. 'prescribed by the Act,' 11 Mad. 218. Each payment of interest gives a fresh starting-point, ibid., and 6 Cal. 340: 11 Bom. 282.

P. 971, sec. 21, note 6, l. 4, *after* 'so' *insert* 10 Bom. 358: 10 All. 418.

P. 978, art. 11, note 2. See 13 Bom. 72.

— art. 11, col. 2. The policy of the Act is to secure the speedy settlement of questions of title raised at execution-sales, and for that reason a year is fixed as the time within which the suit must be brought, L. R. 15 I. A. 123, at p. 127.

— art. 12, cl. (*c*), note 6, *prefix* 13 Bom. 221.

P. 980, art. 29, *prefix to note* 4, 11 Mad. 345, at p. 355.

P. 981, art. 32, note 8, l. 3, *after* occupying-tenant *insert* on land let to be used as *arable*; and *after* 8 All. 446 *insert* 10 All. 634.

P. 982, art. 49, col. 3, 'wrongfully taken,' see 11 Mad. 333.

P. 983, art. 60, 'deposited,' see 16 Cal. 25.

— art. 62, note 7, l. 1, *after* 'applies' *insert* 'whenever the defendant has received money which in justice and equity belongs to the plaintiff under circumstances which render a receipt of it a receipt by the defendant to the use of the plaintiff (Bullen & Leake, third edition, 44). It applies, therefore'; *and add to note*, 15 Cal. 656.

P. 988, art. 95, see 12 Mad. 168.

— note 3, *prefix* 13 Bom. 221.

— art. 97, see 11 All. 47, at p. 57: S. C. L. R. 15 I. A. 211, at p. 219.

P. 990, art. 113, 11 All. 27.

P. 991, art. 120, suit by zamíndár for removal of trees illegally planted in waste land of his village, 10 All. 634.

P. 992, art. 127, note 8, l. 1, *after* 109 *insert* 11 Mad. 380, at p. 392

P. 993, art. 132, note 6, l. 5, *after* 389 *insert* 15 Cal. 542.

P. 994, art. 134, note 1, l. 3, *after* 475 *insert* 12 Bom. 352.

— art. 138, note 6, *add* 12 Bom. 678, at p. 681.

P. 995, art. 141. This article applies not to a suit by an heir at law as such, but to a suit by a Hindú or Muhammadan who, prior

to the date of the death of the female, occupied the position of a remainderman, reversioner, or devisee, and on her death sues in that character, 10 All. 343, at p. 346.

P. 995, art. 142, note 5. As to the burden of proving possession, see L. R. 16 I. A. 23.

— art. 144, note 8, l. 2, *after* 86 *insert* 10 All. 485: 13 Bom. 160.

P. 996, notes, col. 1, l. 18, *after* 210 *insert* That adverse possession against a Hindú widow for more than twelve years bars a subsequently adopted son, see 13 Bom. 160.

P. 996, notes, col. 1, last line, *after* tenant *insert* 12 Bom. 322 (occupation by one of two persons holding land for same deity).

P. 997, art. 147, note 4, *add* In 13 Bom. 90 the Court dissented from 14 Cal. 731 and followed 6 All. 551.

P. 998 et seq. For the purposes of the Limitation Act appeals and applications to the Special Court in Lower Burma shall be deemed to be, respectively, appeals and applications to a High Court under the Code of Criminal Procedure, 1882, or under the Code of Civil Procedure, as the case may be. Act XI of 1889, sec. 71.

P. 998, art. 156, note 4, *add* An appeal to the High Court at Bombay from certain orders of the Chief Judge of the Bombay Small Cause Court and of the Presidency Magistrates in Bombay, shall for the purpose of art. 156 be deemed to be an appeal under the Civil Procedure Code in a case not provided for by No. 151 and No. 153. See Act XII of 1888, sec. 5.

An advocate whose license is suspended or withdrawn by the Recorder of Rangoon may appeal to the High Court at Fort William, and for the purposes of the Limitation Act the appeal shall be deemed to be an appeal under the Code of Civil Procedure, Act XI of 1889, sec. 74.

P. 1001, art. 178, note 4, col. 2, l. 4, *after* 371 *insert* 10 All. 350.

P. 1002, art. 179, note 1. The first three lines should be, 'i. e. where a memorandum of appeal from the decree or order of which execution is sought has been presented in Court, 2 All. 273: 5 All. 236: 16 Cal. 250. But where there has been'

— art. 179, note 5, l. 1, *after* 34 *insert* 12 Bom. 427.

P. 1003, art. 179, cl. 4, notes, col. 1, l. 28, *add* Nor is an application by a decree-holder for a copy of a decree with intent to apply for execution, 11 Mad. 336. The true meaning of 'step in aid of execution' is step which must be taken before execution can be had, 11 Mad. 336, at p. 339.

— note 1, l. 1, *after* 348 *insert* 13 Bom. 237.

P. 1004, art. 179, cl. 6, notes, col. 1, l. 3, *add* and see 2 All. 443: 5 Cal. 97: 7 Cal. 56. But if the right to enforce payment of the whole sum due upon default in paying an instalment has been waived by subsequent payment and receipt of the overdue instalment, the parties are remitted to the same position as they would have been in if no default had occurred, 15 Cal. 505.

THE COURT-FEES ACT.

P. 1018. For the purposes of the Court-Fees Act, the Special Court in Lower Burma shall be deemed to be a High Court in the exercise of its jurisdiction as a Court of Appeal or as a Court of Reference, as the case may be, Act XI of 1889, sec. 71.

P. 1021, sec. 19, cl. viii. For the words and figures 'and certificate mentioned in the First Schedule to this Act annexed, No. 12,' Act VII of 1889, sec. 13, subsec. 2 substitutes the words and figures 'and save as regards debts and securities, a certificate under Bombay Regulation viii of 1827.'

P. 1025, secs. 19 G and 19 H. Any penalty or forfeiture under either of these sections may, on the certificate of the Chief Controlling Revenue Authority, be recovered from the executor or administrator as if it were an arrear of land revenue by any Collector in any part of British India. But the Chief Controlling Revenue Authority may remit the whole or any part of any such penalty or forfeiture, or any part of any further penalty payable under sec. 19 E (p. 1024), Act VI of 1889, sec. 20.

P. 1032. In the first schedule after No. 13, the Lower Burma Courts Act (XI of 1889), sec. 84, inserts the following:—

Number.		Proper Fee.
14. Application to the Court of the Recorder of Rangoon for the exercise of the revisional jurisdiction of a High Court over the Court of Small Causes of Rangoon under section 622 of the Code of Civil Procedure or section 25 of the Provincial Small Cause Courts Act, 1887.	When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees.	Two rupees.
	When such amount or value exceeds twenty-five rupees.	The fee leviable on a memorandum of appeal.

P. 1033, articles 11 and 12. For these, Act VII of 1889, sec. 13, substitutes the following :—

Number.		Proper fee.
"11. Probate of a will or letters of administration with or without will annexed.	If the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees.	Two per centum on such amount or value : provided that when, after the grant of a certificate under the Succession Certificate Act, 1889, or any enactment repealed by that Act, or under the Regulation of the Bombay Code No. VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.
'12. Certificate under the Succession Certificate Act, 1889.	In any case.	Two per centum on the amount or value of any debt or security specified in the certificate under section 8 of the Act, and three per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act. NOTE.—(1) The amount of a debt is its amount, including interest, on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained. (2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act, and, where such a power has been so conferred whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of, the security, or for both purposes, the value of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.
"12A. Certificate under the Regulation of the Bombay Code No. VIII of 1827.		(1) As regards debts and securities, the same fee as would be payable in respect of a certificate under the Succession Certificate Act, 1889, or in respect of an extension of such a certificate, as the case may be, and (2) as regards other property in respect of which the certificate is granted, two per centum on so much of the amount or value of such property as exceeds one thousand rupees."

P. 1039, Sched. II, art. 6. For this article, Act VI of 1889, sec. 18, subsec. 2, substitutes the following : 'Bailbond or other instrument of obligation given in pursuance of an order made by

a Court or Magistrate under any section of the Code of Criminal Procedure, 1882, or the Code of Civil Procedure.'

This was suggested by the decision of the High Court at Allahabad, 11 All. 16.

P. 1040, art. 16. Repealed by Act VI of 1889, sec. 18, subsec. 1.

P. 1041, art. 17, cl. vi. Suit to remove the káraṇavaṇ of a Malabar tarawáḍ, 11 Mad. 266.

THE SUITS VALUATION ACT.

P. 1044, secs. 5 and 9. The Court of the Recorder of Rangoon shall for the purposes of the Suits Valuation Act, 1887, be deemed to be a High Court, Act XI of 1889, sec. 44.

THE STAMP ACT.

P. 1052, sec. 3, cl. (10), 'duly stamped,' note 1, l. 1, *after* 532 *insert* 11 Mad. 377.

— sec. 3, cl. (13), 'specified property,' note 6, l. 1, *after* 39 *insert* 216.

P. 1053, sec. 3, cl. (17), 'writing,' note 4, *add* 11 Mad. 329.

P. 1054, sec. 6, l. 2, 'several instruments employed for completing the transaction.' See 13 Bom. 281, at p. 284.

P. 1064, sec. 34, l. 3, 'acted upon,' 12 Bom. 446 (admission of secondary evidence of unstamped note).

P. 1078, Sched. I, art. 2. In this article, after 'Administration-bond,' Act VI of 1889, sec. 18, subsec. 3, inserts the following: 'including a bond given under sec. 256 of the Indian Succession Act, 1865, sec. 6 of the Government Savings Banks Act, 1873, sec. 78 of the Probate and Administration Act, 1881, or sec. 9 or sec. 10 of the Succession Certificate Act, 1889.'

P. 1079, Sched. I, art. 5, cl. (*c*), note 1, *after* 478 *insert* 13 Bom. 37.

P. 1081, Sched. I, art. 13. In this article, after the words 'this Act,' Act VI of 1889, sec. 18, subsec. 4, adds the words 'or by the Court Fees Act, 1870.'

P. 1086, Sched. I, art. 36, note 1, *add* 12 Mad. 89.

— art. 38. See 13 Bom. 280 and 281.

THE REGISTRATION ACT.

P. 1006, last line, *add* The Act provides for the registration of documents, not for the registration of title; and perhaps at

present the greatest benefit which it confers is, in supplying proof that a given document was in existence at a certain time and was not fabricated afterwards.

P. 1111, sec. 23, note 5, *add* 15 Cal. 541: 16 Cal. 189.

P. 1113, sec. 28, note 1. The decision was reversed by the Judicial Committee, L. R. 16 I. A. 12: S. C. 11 All. 136.

P. 1120, sec. 50, l. 3, 'duly registered,' *i. e.* under Act III of 1877, not under any prior Act, 13 Bom. 229.

— note 4, para. 4, *add* And Bom. 571, Sargent C.J. said that sec. 50 of the Registration Act of 1877 'has taken away the preference given to an unregistered document accompanied by possession (where registration was optional) as against a registered document.'

P. 1129, sec. 76. No period is prescribed within which the order of refusal must be made; but such order must obviously be made 'at some time *after* the expiration of the time allowed for admitting the document, except in cases where there has been an express refusal,' 16 Cal. 189, at p. 193, per Petheram C. J.

P. 1131, sec. 82, note 4, l. 4, *after* 566 *insert* 11 Mad. 500.

ADDENDA.

(*Anglo-Indian Codes*, vol. ii. pp. 1159–1174.)

P. 1165, l. 24, *add* As to the construction of statutory provisions forbidding members of a public body to be concerned in contracts with the body, see *Nutton* v. *Wilson*, 22 Q. B. Div. 744.

INDEX TO VOL. I.

Insert the following in alphabetical order:—

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CORRIGENDA.

VOL. I.

P. 17, l. 8, *before* is *insert* it.
P. 34, l. 18, *for* 498 *read* 494.
P. 44, l. 4 from bottom, *for* or *read* of.
P. 315, l. 15, *for* 103 and 182 *read* and 103.
P. 413, note 2, last line but one, *after* does *insert* not.
P. 487, sec. 2, l. 1, *after* Acts *dele* [1].
P. 502, ll. 5, 6, *for* But . . . . Act *read* And in India the Contract Act, sec. 63, renders consideration unnecessary in all cases of waiver, whether before or after breach.
P. 531, l. 1, *dele* make the bailment.
P. 953, note 1, l. 9, *for* 989 *read* § 80.
P. 999, col. 1, Coercion, l. 2, *for* content *read* consent.

VOL. II.

P. 11, l. 15, *for* and *read* It was proposed also to extend it to cases.
— ll. 17, 18, *for* is intended to meet *read* would have met.
— l. 38, *for* section *read* chapter.
P. 124, note 1, *for* sec. 6 *read* sec. 7.
P. 203, note 1, *for* sec. 11 *read* sec. 10.
P. 235, l. 15, omit [4], and transfer note [4] to the end of note [2].
P. 274, sec. 153, col. 3, *for* shall not arrest without warrant *read* Ditto.
— sec 154, col. 3, *for* Ditto *read* Shall not arrest without warrant.
P. 325, col. 5, *for* Not bailable *read* Bailable.
P. 376, l. 14, *read* Champáran.
P. 473, notes, col. 1, third line from bottom, *for* officer *read* office.
P. 474, note 1, l. 1, *for* barred *read* or by necessary implication.
P. 828, note 3 should be note 2; and *for* 1865 *read* 1855.
P. 836, l. 6 from bottom, *for* was *read* has.
P. 837, l. 6 from bottom, *for* prosecuted *read* prevented.
P. 838, note 3, l. 2, *for* (*h*) *read* (*k*).
P. 871, note 10, *for* 'act' *read* 'some act performed by,' *and in the text transfer* [10] *to* 'from.'
P. 913, last line of text, *for* regularily *read* regularly.
P. 916, sec. 116, marginal note, *for* or *read* of.
P. 944, l. 9, *for* declaration *read* statement.
P. 1005, col. 3, l. 10, *for* realising *read* releasing.
P. 1185, col. 2, art. 'compensation,' l. 12, *for* inquiry *read* injury.

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